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Title 3—

The President

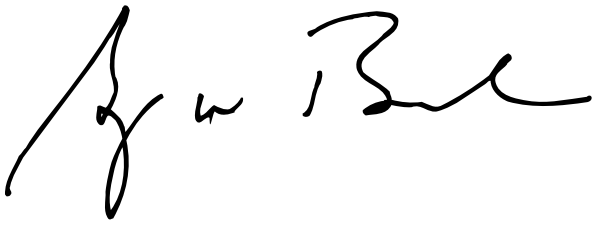
Presidential Determination No. 02–32 of September 30, 2002

Presidential Determination on the Transfer of Funds from International Organizations and Programs Funds to the Child Survival and Health Programs Fund

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 610 of the Foreign Assistance Act of 1961, as amended (FAA), I hereby determine it is necessary for the purposes of the FAA that the $34 million in FY 2002 International Organizations and Programs funds that were allocated for the United Nations Population Fund be transferred to, and consolidated with, the Child Survival and Health Programs Fund, and such funds are hereby transferred and consolidated. The transferred funds will be administered by the U.S. Agency for International Development in support of reproductive health and maternal health and related programs.

You are authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 30, 2002.

[FR Doc. 02–25617
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Rules and Regulations

Federal Register

Vol. 67, No. 194

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

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

United States Standards for Milled Rice; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a Direct final rule in the **Federal Register** revising the United States Standards for Milled rice to establish and add a new level of milling degree, ''hard milled,'' to the existing milling requirements, and to eliminate reference to ''lightly milled'' from the milling requirements of U.S. Standards for Milled Rice.

FOR FURTHER INFORMATION CONTACT: John Giler, (202) 720–0252.

Correction

In the **Federal Register** of September 30, 2002 (67 FR 61249), make the following corrections to the Effective Date section of the **SUPPLEMENTARY INFORMATION,** first column, last paragraph on page 61250:

1. Remove ''June 30, 2002'', and add ''October 31, 2002'' in its place.

2. Remove ''August 1, 2002'', and add ''December 1, 2002'' in its place.

Dated: October 2, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–25432 Filed 10–4–02; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–4 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the rules and regulations currently prescribed under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule exempts shipments of small quantities of tree run citrus from the grade, size, and assessment requirements of the order. Producers can ship 150 1–3/5 bushel boxes per variety, per shipment, of their own citrus free from order regulations, not to exceed 1,500 boxes per variety for the season. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

DATES: Effective October 8, 2002; comments received by December 6, 2002 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by December 6, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202)720–8938, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler

is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the rules and regulations under the order to exempt shipments of small quantities of tree run citrus from grade, size, and assessment requirements. Tree run citrus is wholesome citrus picked and boxed in the field and taken directly to market without being graded or sized. With this change, producers are allowed to ship 150 1⅗ bushel boxes per variety, per shipment, of their own citrus free from marketing order regulations. Total shipments cannot exceed 1,500 boxes per variety for the season. This action was unanimously recommended by the committee at its meeting held on May 22, 2002.

Section 905.80 of the marketing order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

This rule adds section 905.149 to the rules and regulations under the order. This section defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus fruit exempt from grade, size, and assessment requirements under the order. Under this section, once the exemption has been approved, the grower must report to the committee the volume of fruit shipped, the date of the shipment, and type of transportation used.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, ''Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree.'' Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to this change, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this change, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection. Growers will be able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

Over the past few years, small producers of Florida citrus have expressed concerns regarding problems incurred when selling their citrus. These concerns include costs, returns, and available markets. These problems, along with market conditions, have driven a fair number of citrus growers and handlers out of the citrus industry. These concerns have been discussed at committee meetings, as well as meetings of other industry groups.

Some small growers have stated they have had difficulty getting packinghouses to pack their fruit. There is limited demand for certain varieties of citrus produced. In some cases, supply exceeds demand in the standard markets. According to committee data, over the past five years, fresh grapefruit sales have dropped 25 percent and fresh orange shipments are down 11 percent. In some cases, varieties may be out of favor with handlers and consumers, or there may be a glut on the market of a particular variety of fruit. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

The costs of growing for the fresh market have been increasing, while, in many cases the returns to the grower have been decreasing. The cost of picking, packing, and hauling, and associated handling costs for fruit going to the fresh market, is sometimes greater than the grower's return on the fruit. The costs associated with growing for the fresh market are greater than the costs for growing for the processed market.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. For example, during the last five years, only the 1999–2000 season produced on-tree returns for processed red seedless grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2000–01 season was $2.72 compared to $4.25 for fresh oranges.

In some cases, where the cost of harvesting citrus exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets to move their fruit in an effort to increase returns. Several growers at the meeting stated regulations imposed on the citrus industry have made it difficult for them to ship homegrown fruit into interstate markets. Some growers believe secondary markets exist which are not currently being supplied that would provide them an additional outlet to sell their citrus. They think niche markets exist that could be profitable if they were given the opportunity to reach them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received.

Growers want the opportunity to pursue those niche markets. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe to do it profitably, they need to bypass the normal handler operations and the associated costs.

The committee listened to the concerns of these small growers and the problems they have encountered. In an effort to allow these growers to pursue these niche markets, the committee, which consists of growers and handlers, unanimously voted to allow a minimum quantity of citrus to be shipped exempt from the grade, size, and assessment regulations. The committee recommended growers be allowed to ship up to 150 1⅗ bushel boxes of each variety, per shipment, from their own groves, with total shipments for the season not to exceed 1,500 boxes per variety.

Throughout industry discussions, many different combinations of varieties and shipment totals were discussed. In

making this recommendation, the committee determined that 150 boxes of each variety per shipment will allow the grower to ship a sufficient amount of fruit to make the exemption cost effective and yet not allow too much fruit to enter market channels exempt from marketing order requirements. The committee believes this level of volume will help keep this fruit in non-competitive outlets.

The committee believes this tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. This change allows growers to sell directly to similar markets outside of the state. The committee believes this action will allow the industry to service more non-traditional markets and that this may be a way to increase fresh market shipments and develop new markets. Granting this exemption will allow growers to supply markets that might not otherwise be supplied. Some members expect that this tree run or grove fresh fruit may create greater consumer interest in fresh citrus fruit.

Under this provision, the grower is required to apply to the committee, on a ''Grower Tree Run Certificate Application'' form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide the committee with their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced on the specified grove. The grower must also certify that the fruit to be handled comes from the grove owned by the grower applicant. The grower will report to the committee the actual number of boxes per variety shipped under the exemption on the shipment form discussed below.

The Grower Tree Run Certificate Application form will be submitted to the committee manager. The manager will review the application for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a ''Report of Shipments Under Grower Tree Run Certificate'' form, also provided by the committee, must be completed for each shipment. On this form, the grower will provide the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the committee. This report will enable the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

The FDOC defines tree run grade and wholesomeness of citrus fruit. This fruit is handled by the grower and bypasses normal handler operations. Even with the change to the provisions under the order, tree run citrus must still meet the requirements of the State of Florida Statutes and FDOC regulations, including inspection. Consequently, growers will continue to need to have the fruit inspected to meet current State requirements.

This exemption will be effective for the current season, beginning with the effective date of this rule, and ending July 1, 2003, only. The committee determined that offering the exemption for one season will provide sufficient information on how the fruit shipped under the exemption was received on the market. It will also indicate whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. It will also indicate the number of growers interested in utilizing the exemption and the volume of citrus shipped under the exemption. In addition, it will provide the committee with information regarding any potential impact on competitive outlets. The committee will also have information available regarding any compliance issues not previously discussed. At the end of the season, the committee will review all available information and decide whether the exemption should be continued.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 80 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, the average annual f.o.b. price for fresh Florida citrus during the 2000–01 season was approximately $8.10 per 4/5-bushel carton for all shipments, and the total fresh shipments for the 2000–01 season are estimated at 53.5 million 4/5-bushel cartons of Florida citrus. Approximately 50 percent of the handlers handled 93 percent of Florida citrus shipments. Using information provided by the committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition. Although specific data is unavailable, the Department believes that the majority of Florida citrus producers may be classified as small entities.

This rule adds a § 905.149 to the rules and regulations under the order to exempt shipments of small quantities of

tree run citrus from the grade, size, and assessment requirements of the order. This action allows growers to ship 150 1⅗ bushel boxes per variety, per shipment, of their own tree run citrus free from marketing order regulations into interstate markets. Total shipments cannot exceed 1,500 boxes per variety for the season per individual grower. This change is effective for the 2002–03 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high as $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower. This rule has the opposite effect, reducing the costs associated with having fruit handled by a packinghouse. This rule will enable growers to ship their tree run citrus free from grade, size, and assessment requirements under the order. This action will allow growers to ship minimum quantities of their citrus directly into interstate commerce exempt from some order requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets. This will benefit all growers regardless of size but it is expected to have a particular benefit for the small grower.

The committee considered several alternatives to this action, including making no change to the current regulations. The committee believed that some change was necessary to help Florida citrus growers. The committee considered allowing growers to ship unlimited quantities of any grower's citrus. This option was rejected because it would have caused market disruption and compliance problems, as growers could become shippers for other growers. It would have also made it more difficult to keep this fruit in noncompetitive outlets. Other alternatives considered were increasing the number of boxes available to be shipped per load, and increasing the number of boxes available to be shipped per season. These options were also rejected amid concerns that too much fruit could be shipped and find its way into the competitive markets.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the committee has a number of appointed subcommittees to review certain issues and make recommendations to the committee. A subcommittee met May 21, 2002, and discussed the tree run issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This action requires two additional forms. These information collection requirements are discussed in the following section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is requesting emergency approval for a new information collection request for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905. The emergency request is necessary because insufficient time is available to follow normal clearance procedures.

Title: Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, Marketing Order No. 905.

OMB Number: 0581–NEW.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Florida citrus marketing order program, which has been operating since 1939.

On May 22, 2002, the committee unanimously recommended revising the order's administrative rules and regulations to exempt a small volume of a grower's tree run fruit from certain order requirements and to require producers to apply to the committee for such an exemption and to report to the committee information on their shipments under the exemption. This information will be reported on two new committee forms. *Form CAC 401, Grower Tree Run Certificate Application*, is used by growers to apply for an exemption to ship their own tree run Florida citrus fruit during the season. *Form CAC 402, Report of Shipments Under Grower Tree Run Certificate*, is used by growers to inform the committee of their tree run shipments during the regulation period.

The new reports are needed so the committee can collect information on the number of growers shipping their own tree run Florida citrus fruit into interstate commerce during the regulation period, and information on the volume of tree run fruit shipped. The committee will evaluate this information and determine whether a grower is in compliance with the regulation. These reports will ensure compliance with the regulations and assist the committee and the USDA with oversight and planning.

The information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters staff, and authorized committee employees. Authorized committee employees will be the primary users of the information and AMS would be the secondary user.

The request for approval of the new information collections under the order is as follows:

CAC 401, Grower Tree Run Certificate Application

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Growers applying to ship their own tree run Florida citrus fruit during the 2002–03 season.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.74 hours.

CAC 402, Report of Shipments Under Grower Tree Run Certificate

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Growers who handle their own tree run Florida citrus fruit during the regulation period.

Estimated Number of Respondents: 45.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 11.21 hours.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the Florida citrus marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. As mentioned before, because there is insufficient time for a normal clearance procedure and prompt implementation is needed, AMS is seeking emergency approval from OMB for the use of the two new forms for the 2002–03 regulation period. Upon OMB approval, the forms will be merged with the forms currently approved under OMB No. 0581–0189, ''Generic OMB Fruit Crops.'' As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition to this change in the information collection burden, this rule exempts grower owned, tree run, Florida citrus fruit from some of the rules and regulations under the order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place as soon as possible to cover as many shipments during the 2002–03 season as possible. Also, growers need to know they are free to market their citrus under these exemption procedures. In addition, this issue has been widely discussed at various industry and association meetings, and the committee has kept the industry well informed. Interested persons have had time to determine and express their positions. Further, growers and handlers are aware of this rule, which was recommended at public meetings. Also, a 60-day comment period is provided for in this rule.

List of Subjects in 7 CFR Part 905

Oranges, Grapefruit, Tangerines, Tangelos, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 905.149 is added to read as follows:

§ 905.149 Procedure for permitting growers to ship tree run citrus fruit.

(a) *Tree run citrus fruit.* Tree run citrus fruit as referenced in this section is defined in the Florida Department of Citrus (FDOC) regulation 20–35.006, which specifies that ''Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree.'' Wholesomeness is as defined in FDOC regulation 20–62.002. The tree run citrus fruit shipped under this provision also must be from the applying grower's own grove.

(b) *Application.* A grower shall apply to ship tree run fruit using a Grower Tree Run Certificate Application, furnished by the committee. Such application shall contain, but not be limited to: the name, address, and phone number of the grower; legal description of the grove(s) from which citrus will be shipped; variety of citrus produced on the identified grove(s); approximate number of boxes produced on the identified grove(s); and a certification to the U.S. Department of Agriculture and to the committee as to the truthfulness of the information shown thereon; and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents.

(c) *Approval.* The committee or its duly authorized agents shall give prompt consideration to each application for a Grower Tree Run Certificate. Approval of an application will be based upon a determination as to whether the information contained therein and on whether other information available to the committee supports an application's approval. Approval of an application shall be evidenced by the issuance of a Grower Tree Run Certificate to the applicant. Each certificate shall expire at the end of the fiscal period.

(d) *Suspension or denial of a Grower Tree Run Certificate.* The committee may investigate the handling of tree run shipments under a Grower Tree Run Certificate to determine whether growers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that a grower is failing to comply with the requirements and regulations applicable to such certificates, the Grower Tree Run Certificate issued to such grower may be suspended or, in the case of an application for the issuance of an initial Grower Tree Run Certificate, may be denied. Such suspension of a certificate shall be for a reasonable period of time as determined by the committee, but in no event shall it extend beyond July 31, 2003. In the case of the denial of an application for the issuance of an initial certificate, such certificate shall be denied until the applicant comes into compliance with the requirements and regulations applicable to such certificates. Prior to suspending or denying an application for a Grower Tree Run Certificate, the committee shall give the grower reasonable

advance notice in writing of its intention and the facts and reasons therefor, and afford the grower an opportunity, either orally or in writing, to present opposing facts and reasons. The grower shall be informed of the committee's determination in writing and in a timely manner.

(e) To qualify for a Grower Tree Run Certificate, each such grower must notify the committee prior to the first shipment of tree run Florida citrus fruit of the grower's intent to ship such citrus, submit an application on forms supplied by the committee, and agree to other requirements as set forth in this section with respect to such shipments.

(f) The handling of tree run citrus under a Grower Tree Run Certificate shall be exempt from the provisions of §§ 905.52 and 905.53 and the regulations issued thereunder, under the following conditions:

(1) A grower may only ship up to 150 1⅗ bushel boxes per variety, per shipment.

(2) A grower may only ship up to 1,500 boxes per variety per season.

(3) This rule is applicable for the 2002–03 season only. Each grower certificate shall expire July 31, 2003.

(4) Each grower shall apply to the Citrus Administrative Committee and receive a Grower Tree Run Certificate prior to shipping their own tree run Florida citrus fruit.

(5) Each grower of citrus shipping under a Grower Tree Run Certificate shall supply the committee with reports on each shipment as requested by the committee, on forms supplied by the committee, providing the following information: The name and address of the grower, along with the grower's Grower Tree Run Certificate number; the legal description of the grove; the variety and amount of citrus shipped; the date the fruit was shipped; and the truck/trailer license number. A copy of the form will be completed for each shipment. One copy of the report will be forwarded by the grower to the committee office within 10 days after such shipment, and one copy of the report will accompany each shipment and be given to the Road Guard Station.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25430 Filed 10–2–02; 2:25 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV02–906–1 IFR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Texas Valley Citrus Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit handled. The Committee locally administers the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective October 8, 2002. Comments received by December 6, 2002 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 30, 2002, and unanimously recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.12 per 7/10-bushel carton of oranges and grapefruit. The Committee met again on August 28, 2002, and recommended a decreased assessment rate of $0.11, with no change to the previously approved budget of $1,226,022. Thirteen of the 14 Committee members and alternates acting as members voted in support of the $0.11 per 7/10-bushel carton decrease. One Committee member voted against the decrease. In comparison, last year's budgeted expenditures were $1,236,777. The assessment rate of $0.11 is $0.01 lower than the rate currently in effect. The Committee voted to reduce the assessment rate after determining that its reserve fund was higher than they believed necessary, and to lower handler assessment costs for 2002–03 by $100,000.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 10 million 7/10-bushel cartons, which should provide $1,100,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $274,041) will be kept within the maximum of one fiscal period's expenses permitted by the order (§ 906.35).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 410 producers of oranges and grapefruit in the production area and approximately 15 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated Texas citrus industry profile shows that 6 of the 15 handlers (40 percent) shipped over 651,042 7/10-bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $7.68 per 7/10-bushel carton, these handlers could be considered large businesses under SBA's definition, and the remaining 9 handlers (60 percent) could be considered small businesses. Of the approximately 410 producers within the production area, few have sufficient acreage to generate sales in excess of $750,000. Thus, the majority of handlers and producers of Texas oranges and grapefruit may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.12 to $0.11 per 7/10-bushel carton of oranges and grapefruit. The Committee recommended 2002–03 expenditures of $1,226,022 and an assessment rate of $0.11 per 7/10-bushel carton of oranges and grapefruit. The recommended assessment rate of $0.11 is $0.01 lower than the current rate. The quantity of assessable oranges and grapefruit for the 2002–03 fiscal year is estimated at 10 million cartons. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal period include $810,500 for advertising, $179,000 for the Mexican Fruit Fly program, $107,845 for management and administration of the program, and $74,777 for compliance. Budgeted expenses for these items in 2001–02 were $810,500, $197,000, $104,500, and $74,777, respectively.

The Committee recommended the $0.11 assessment rate to lower its operating reserve to $171,249. With a $0.12 assessment rate, the Committee projected its reserve on July 31, 2003, to be $271,249, and it thought that was higher than needed to administer the program. It also recommended the reduced rate to lower handler assessments by $100,000 during 2002–03.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $1,226,022, which included a decrease in the Mexican Fruit Fly program and an increase in the management and administration of the program. Budgeted expenses for the advertising program and the compliance program remained the same as last year. In arriving at the budget, the Committee considered information from various sources, including the Executive Committee. The Committee considered leaving the established higher assessment rate unchanged. However, it concluded that the reserves currently held by the Committee are higher than the Committee needs to administer the program.

The proposed assessment rate of $0.11 per 7/10-bushel carton of assessable oranges and grapefruit was determined by dividing the total budget by the 10 million 7/10-bushel cartons of oranges and grapefruit estimated for the 2002–03 fiscal period. The $0.11 rate will provide $1,100,000 in assessment income. The additional $126,022 to fund the Committees estimated expenses will come from the Committee's reserve, a refund of an overpayment from the Mexican Fruit Fly program, and interest income.

A review of historical information (October 1998 through May 2002) and preliminary information pertaining to the upcoming fiscal period indicates that the packinghouse door price for the 2002–03 fiscal period could range, monthly, from $1.65 to $10.36 per 7/10-bushel carton of Texas oranges and grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower (packinghouse door) revenue could range between 6.67 percent and 1.06 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 28, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2002–03 fiscal period began on August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (2) this action decreases the assessment rate for assessable oranges and grapefruit beginning with the 2002–03 fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

§ 906.235 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.11 per 7/10-bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25429 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV02–920–4 FR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Kiwifruit Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The Committee locally administers the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938; or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit.

The California kiwifruit marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 10, 2002, and unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $78,000. The assessment rate of $0.045 is $0.015 higher than the rate currently in effect. The higher assessment rate is needed to offset the 2002–03 increase in salaries and vehicle expenses, and to keep the operating reserve at an adequate level.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal periods:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The assessment rate recommended by the Committee was derived using the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22–pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate will provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) will be within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 326 producers of kiwifruit in the production area and approximately 52 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as

those whose annual receipts are less than $5,000,000.

None of the 52 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. Two of the 326 producers subject to regulation have annual sales of at least $750,000. Thus, the majority of handlers and producers of kiwifruit may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.03 to $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The Committee unanimously recommended 2002–03 expenditures of $80,760 and an assessment rate of $0.045 per 22-pound volume fill container or equivalent of kiwifruit. The assessment rate of $0.045 is $0.015 higher than the 2001–02 rate. The quantity of assessable kiwifruit for the 2002–03 fiscal period is estimated at 2,068,182 22-pound volume fill container or equivalent of kiwifruit. Thus, the $0.045 rate should provide $93,068 in assessment income and be adequate to meet this year's expenses.

The following table compares major budget expenditures recommended by the Committee for the 2002–03 and 2001–02 fiscal years:

Budget expense categories	2002–03	2001–02
Administrative Staff & Field Salaries	$55,500	$50,000
Travel	5,000	9,500
Office Costs/Annual Audit	14,500	14,500
Vehicle Expense Account	5,760	4,000

The Committee reviewed and unanimously recommended 2002–03 expenditures of $80,760, which included increases in administrative salaries and vehicle expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Committee was derived using the following formula: Anticipated expenses ($80,760), plus the desired 2003 ending reserve ($36,287), minus the 2002 beginning reserve ($23,979), divided by the total estimated 2002–03 shipments (2,068,182 22-pound volume fill containers). This calculation resulted in the $0.045 assessment rate. This rate will provide sufficient funds to meet the anticipated expenses of $80,760 and result in a July 2003 ending reserve of $36,287, which is acceptable to the Committee. The July 2003 ending reserve funds (estimated to be $36,287) will be within the maximum permitted by the order, approximately one fiscal period's expenses (§ 920.41).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 season could range between $9.50 and $13.00 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could range between 0.5 and 0.3 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 10, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 15, 2002 (67 FR 53322). Copies of the proposed rule were also mailed or sent via facsimile to all California kiwifruit handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending September 16, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving the 2002–03 kiwifruit crop and the marketing order requires that the rate of assessment apply to all assessable kiwifruit handled during the 2002–03 and subsequent seasons; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 920.213 is revised to read as follows:

§ 920.213 Assessment rate.

On and after August 1, 2002, an assessment rate of 0.045 per 22-pound volume fill container or equivalent of kiwifruit is established for kiwifruit grown in California.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25428 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AG82

Noninsured Crop Disaster Assistance for Sea Grass and Sea Oats

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Commodity Credit Corporation (CCC) regulations governing the Noninsured Crop Disaster Assistance Program (NAP) to add sea grass and sea oats as eligible crops as provided for in the Farm Security and Rural Investment Act of 2002 (2002 Act). The intended affect of this rule is to make producers of these crops eligible for disaster assistance under NAP.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Peterson, Chief, Noninsured Assistance Programs Branch (NAPB); Production, Emergencies, and Compliance Division (PECD); Farm Service Agency (FSA); United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–5172; e-mail *Steve_Peterson@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 196 of the Federal Agriculture Improvement Act of 1996 (1996 Act) is the statutory authority for NAP. Section 10101 of the 2002 Act amended section 196 to provide for the new crop eligibility implemented by this rule. Section 161 of the 1996 Act requires that the provisions of Title I of the 1996 Act, which includes section 196, be issued without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are:

Noninsured Crop Disaster Assistance—10.451.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do not apply to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Paperwork Reduction Act

Section 196 of the 1996 Act requires that these regulations be issued without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not necessary before the regulations may be made effective. However, FSA will still request approval of the new information collections required by this rule.

Government Paperwork Elimination Act

CCC and FSA are committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required by participation in the Noninsured Crop Disaster Assistance Program are not yet fully implemented in a way that would allow the public to conduct business with FSA electronically. Accordingly, applications for this program may be submitted at FSA offices by mail or FAX.

Background

The Noninsured Crop Disaster Assistance Program is operated by FSA and CCC under the authority section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) (the 1996 Act). The 1996 Act requires that eligible program crops be crops that are used for food or fiber or that are specifically identified by the statute. Sea grass and sea oats were neither and therefore were not eligible. Section 10101 of the 2002 Act amended section 196 of the 1996 Act to specifically identify them as eligible crops.

Section 196 of the 1996 Act provides that the Secretary of Agriculture shall operate a noninsured crop disaster assistance program to provide coverage equivalent to the catastrophic risk protection otherwise available under section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)). Coverage under section 196 is limited to crops that are commercial or agricultural in nature for which

catastrophic risk protection under section 508(b) is not available and that are produced for food or fiber or are specifically included by the statute. Qualifying losses must be due to drought, flood, or other natural disaster, as determined by the Secretary. Among other requirements, the 1996 Act specifies that a producer shall submit an application for noninsured crop disaster assistance at a local office of the Department, that the application must be in such form and contain such information as the Secretary may specify and must be submitted not later than 30 days before the beginning of the coverage period. The coverage period is determined by the Secretary. There are also provisions in the law for acreage reports. Under the statute, differing qualifying loss thresholds are based on whether the crop was planted and failed or whether instead the crop could not be planted because of a qualifying condition. If all other conditions are met, payments will are determined by multiplying the amount by which the harvest is less than 50 percent of the established yield for the crop by 55 percent of the average market price for the crop (or any comparable coverage determined by the Secretary) by a payment rate that takes in other factors. Provisions are also made in the statute for yield determinations. Further details are set out in the final rule published on March 19, 2002, which was a major revision of the NAP regulations.

The rule provides that sea oats and sea grass will be treated as value-loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock. The rule provides that claims involving ornamental sea oat and see grass plants will be compensable in the same manner and subject to the same conditions as ornamental nursery stock under section 1437.305 of the existing regulations. For propagation stock (seed or transplant), claims will be compensable under new provisions set out in the rule. The limitations in the rule reflect the limited purpose of the statute and the limitations that apply to other crops under the same program. They include the requirement that an application for coverage be filed at least 30 days in advance of the coverage period. That rule establishes, among other things, the manner in which the beginning of the coverage period, and hence the last date for filing the application for coverage, is determined.

This rule provides that sea oats and sea grass will be treated as ''value loss'' crops, as opposed to field crops where the loss is not based on the loss of particular plants, but based on loss of an expected yield of a particular plot. As with ornamental crops, all plants that survive the disaster will be treated as not involving a compensable loss even though there may be some damage to the plant. This reflects the orientation of the program to actual yield, rather than quality, losses. In any event, gradations of loss to individual plants would be difficult (a difficulty not contemplated by the statute). It would also be imprecise. Further, in many cases, damaged plants can be rejuvenated.

List of Subjects in 7 CFR Part 1437

Crop insurance, Nursery stock, Plants.

For the reasons set out above, 7 CFR Part 1437 is amended as follows:

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

1. The authority citation for part 1437 continues to read as follows:

Authority: 15 U.S.C. 714 *et seq.*; and 7 U.S.C. 7333.

Subpart A—General Provisions

2. Amend § 1437.4 by removing the word ''and'' at the end of paragraph (c)(4)(vi), removing the period at the end of paragraph (c)(4)(vii) and inserting a semicolon and the word ''and'' in its place, and adding paragraph (c)(4)(viii) to read as follows:

§ 1437.4 Eligibility.

* * * * *

(c) * * *

(4) * * *

(viii) Sea grass and sea oats.

Subpart D—Determining Coverage Using Value

3. Add section 1437.310 to read as follows:

§ 1437.310 Sea grass and sea oats.

(a) Sea grass and sea oats are value loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock.

(b) An eligible commodity under this section intended for sale on a commercial basis as:

(1) An ornamental plant can produce a claim in the event of a loss due to a qualifying condition only in the same manner and subject to the same conditions as ornamental nursery stock under § 1437.305 and such claims shall not, as such, be subject to the provisions of paragraphs (c) through (h) of this section, except to the extent that similar provisions apply to claims under § 1437.305.

(2) Propagation stock (seed or transplant) can produce a claim under this part but only in accord with the provisions that follow in this section and subject to other conditions on payment as may be imposed elsewhere in this part.

(c) For purposes of a loss calculation arising under paragraph (b)(2) of this section, the value of:

(1) Seed will be determined on a yield basis made in accordance with subpart B of this part and average market price established in accordance with § 1437.11.

(2) Transplant losses will be determined based on inventory that existed immediately before and after the disaster and average market price established in accordance with § 1437.11.

(d) Transplant producers must have up-to-date inventory and sales records and other documents, sufficient to document actual losses, as determined by CCC.

(e) The land, waterbed, or facility in which the eligible commodity was located at the time of loss must:

(1) Be owned or leased by the producer;

(2) Have readily identifiable boundaries; and

(3) Be managed and maintained using acceptable growing practices for the geographical region, as determined by CCC.

(f) The producer must have control of the land, waterbed, or facility and must ensure adequate and proper:

(1) Flood prevention;

(2) Growing medium;

(3) Fertilization or feeding;

(4) Irrigation and water quality;

(5) Weed control;

(6) Pest and disease control;

(7) Rodent and wildlife control; and

(8) Over-winterization facilities, as applicable.

(g) The eligible commodity must be:

(1) Grown in a region or controlled environment conducive to successful production, as determined by CCC; and

(2) Placed in the waterbed or facility in which the loss occurs and not be indigenous to the waterbed or facility.

(h) Eligible commodities having any dollar value after the disaster shall be considered as having full value when making loss calculations. Also, damaged plants that do not have any value after the disaster but that can be rejuvenated or may, if not fully rejuvenated, reacquire value, shall be counted as worth full value as well.

(i) In the crop year in which a notice of loss is filed, producers may be

required, at the discretion of CCC, to provide evidence that the eligible commodity was produced in accordance with paragraphs (e), (f), and (g) of this section and other provisions of this part.

Signed in Washington, DC, on September 20, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 00–022N]

E. coli O157:H7 Contamination of Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations and request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this document to inform manufacturers of beef products of the Agency's views about the application of the hazard analysis and critical control point (HACCP) system regulations to contamination with *Escherichia coli (E. coli*) O157:H7.

FSIS believes that the availability of certain scientific data on *E. coli* O157:H7 constitutes a change that could affect an establishment's hazard analysis or alter its HACCP plans for raw beef products. Therefore, under the HACCP regulations, if establishments have not already reassessed their HACCP plans for raw beef products in light of this data, they must do so now. Establishments that have not already reassessed their HACCP plans in light of this data must reassess their HACCP plans to determine whether *E. coli* O157:H7 contamination is a hazard reasonably likely to occur in their production process. This requirement applies to HACCP plans for all raw beef products, including ground beef, other non-intact beef products, and intact beef products. If reassessment results in a determination that *E. coli* O157:H7 contamination is a food safety hazard reasonably likely to occur in the establishment's production process, then it must be addressed in a HACCP plan.

All establishments producing raw beef products are required to reassess their HACCP plans. However, establishments receiving product for grinding may have purchase specifications requiring all their suppliers to have one or more critical control points (CCPs) validated to eliminate or to reduce *E. coli* O157:H7 below detectable levels. Such establishments may determine that no additional steps to address this pathogen are necessary in their production process. Establishments adopting this approach should incorporate these purchase specifications and their means of ensuring that their specifications are met in their HACCP plans, in their Sanitation SOPs, which FSIS has recognized as prerequisites for HACCP, or in other prerequisite programs.

In addition, FSIS is issuing new guidance material related to the control of *E. coli* O157:H7 and is making available the Agency's draft comparative risk assessment of intact and non-intact (blade tenderized) steaks. (*See* **ADDRESSES.**) Additionally, FSIS will be issuing a revised *E. coli* O157:H7 sampling and testing Directive and this notice discusses the revisions expected to be made.

FSIS invites comments on the matters presented in this notice, on its guidance material, and on the draft comparative risk assessment.

DATES: Comments may be submitted by December 6, 2002. Establishments that produce raw beef products, and that have not already reassessed their HACCP plans for those products in light of the scientific data on *E. coli* O157:H7 discussed in this notice, are to reassess their HACCP plans by the following dates according to plant size: December 6, 2002 for large plants (all establishments with 500 or more employees); February 4, 2003 for small plants (all establishments with 10 or more employees but fewer than 500); and April 7, 2003 for very small plants (all establishments with fewer than 10 employees or annual sales of less than $2.5 million).

See the **SUPPLEMENTARY INFORMATION** for FSIS verification dates.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 00–022N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this document and the guidance material will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday. The draft comparative risk assessment of intact and non-intact (blade tenderized) steaks is also available on the Internet at: *http://www.fsis.usda.gov/OPPDE/rdad/publications.htm.* FSIS is making the guidance material available today at the same Internet address.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Director, Regulations and Directives Development Staff, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–5627.

SUPPLEMENTARY INFORMATION:

HACCP

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of meat and poultry products that are unwholesome, adulterated, or misbranded. To further the goal of reducing the risk of foodborne illness from meat and poultry products to the maximum extent possible, FSIS issued final regulations on July 25, 1996, mandating Pathogen Reduction-Hazard Analysis and Critical Control Point (HACCP) Systems for federally inspected establishments (61 FR 38806). These regulations require that federally inspected establishments take preventive and corrective measures at each stage of the food production process where food safety hazards occur.

Part 417, the regulations on HACCP systems, requires a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and to identify the preventive measures an establishment can apply to control those hazards in the production of particular products (§ 417.2(a)). Ten potential hazard areas, including microbiological contamination, are listed to guide establishments in this analysis (§ 417.2(a)(3)). Whenever a hazard analysis reveals one or more such hazards are reasonably likely to occur in the production process, the regulations require that the establishment develop and implement a written HACCP plan, for each product, that includes specified control measures for each hazard so identified (§ 417.2(b)(1) and (c)).

Section 417.2(a)(1) provides that a food safety hazard is reasonably likely to occur if a prudent establishment would establish control measures because the hazard historically has occurred, or because there is a reasonable possibility that it will occur

in the particular type of product being processed, in the absence of those controls.

The likelihood that a food safety hazard will occur in the production process for a particular product at a given location, and the identification and adequacy of preventive measures to control a likely hazard, must be determined by each establishment. Obviously, conditions that affect such determinations may change over time. For this reason, the HACCP system regulations require that every establishment reassess the adequacy of its HACCP plans at least annually and whenever any changes occur that could affect the underlying hazard analysis or alter the HACCP plans (§ 417.4(a)(3)). New information regarding the fact that *E. coli* O157:H7 is more prevalent than was previously thought is such a change. When reassessment reveals that a plan no longer meets the requirements for the contents of a HACCP plan, the establishment must modify the plan immediately (§ 417.4(a)(3)).

E. coli O157:H7 Policy

In 1994, FSIS notified the public that raw ground beef contaminated with *E. coli* O157:H7 is adulterated under the FMIA unless the ground beef is further processed to destroy this pathogen. Also in 1994, FSIS began sampling and testing ground beef for *E. coli* O157:H7. (For the Agency's current sampling and testing program instructions, *see* FSIS Directive 10,010.1, Microbiological Testing Program for *Escherichia coli* O157:H7 in Raw Ground Beef, February 1, 1998, available on the Internet at *http://www.fsis.usda.gov/oppde/rdad/publications.htm* and in the Docket Clerk's office.)

On January 19, 1999, FSIS published a policy statement, ''Beef Products Contaminated with *E. coli* O157:H7'' (64 FR 2803). This statement explained the Agency's policy governing beef products that contain *E. coli* O157:H7. The Agency stated that, in evaluating beef products contaminated with *E. coli* O157:H7, it would distinguish intact cuts of muscle (*e.g.*, steaks and roasts) distributed for consumption from non-intact products (*e.g.,* beef that has been mechanically tenderized by needling or cubing) and from intact cuts of muscle that are to be further processed into non-intact product prior to distribution for consumption (*e.g.*, manufacturing trimmings for use in production of ground beef). This statement explained that intact cuts of beef that are to be further processed into non-intact product prior to distribution for consumption must be treated in the same manner as non-intact cuts of beef because pathogens may be introduced below the surface of these products when they are further processed into non-intact products. Manufacturing trimmings (*i.e.*, pieces of meat remaining after steaks, roasts, and other intact cuts are removed) are an example of this type of product. Although manufacturing trimmings may be intact, they are generally further processed into non-intact product.

The Agency stated that if non-intact products or intact products that are to be further processed into non-intact product prior to distribution for consumption are found to be contaminated with *E. coli* O157:H7, they must be processed into ready-to-eat product, or they would be deemed to be adulterated (64 FR 2804). FSIS explained that pathogens, including *E. coli* O157:H7, may be introduced below the surfaces of non-intact products as the result of the processes by which they are made. As a result, customary cooking of these products may not be adequate to kill the pathogens. In contrast, the meat interior of intact products remains protected from pathogens migrating below the exterior. Consequently, customary cooking of these products will destroy any *E. coli* O157:H7. Finally, in this **Federal Register** notice, FSIS requested comments and recommendations relevant to the Agency's policy and to any regulatory requirements that might be appropriate to prevent the distribution of beef products adulterated with this pathogen.

On March 8, 1999, FSIS held a public meeting to discuss the policy addressed in its January 19, 1999, **Federal Register** notice. On February 11, 2000, FSIS announced that it would hold a public meeting on February 29, 2000, to discuss recent developments concerning *E. coli* O157:H7 (65 FR 6881). In the February 11, 2000, **Federal Register** notice, FSIS also responded to comments received concerning the Agency's *E. coli* O157:H7 policy and again requested comments. On February 29, 2000, FSIS held the public meeting on *E. coli* O157:H7. At the meeting, numerous organizations presented information on *E. coli* O157:H7. FSIS presented information on the new testing procedures that it is using for *E. coli* O157:H7 and on the FSIS risk assessment on *E. coli* O157:H7. The Agricultural Research Service (ARS) presented information on research concerning the incidence of *E. coli* O157:H7 in animals entering the slaughter plant and at various stages in the slaughter process. Also, the Centers for Disease Control and Prevention (CDC) presented information concerning its increased estimates for illnesses associated with *E. coli* O157:H7. A complete transcript of the February 29, 2000, public meeting is available on the Internet at *http://www.fsis.usda.gov/oppde/rdad/frpubs/ecolimtg.pdf.*

On November 5, 2001, FSIS announced the availability of and requested comments on its draft risk assessment for *E. coli* O157:H7 in ground beef (66 FR 55912). At this time, FSIS also made the interpretive summary of the risk assessment and draft risk assessment available on the Internet. The draft risk assessment discusses and cites the studies discussed below. As stated below, under ''Relevant Data Requiring Reassessment,'' the data from some of these studies and FSIS surveillance data provided evidence that *E. coli* O157:H7 is more prevalent than was thought before these data became available.

Risk of E. coli O157:H7 Contamination

Exposure to *E. coli* O157:H7 has been linked to serious, life-threatening human illnesses (hemorrhagic colitis and hemolytic uremic syndrome). At the February 29, 2000, public meeting, a representative from the CDC presented its national estimates for foodborne illnesses associated with *E. coli* O157:H7. These estimates showed an increase from previous CDC estimates of illnesses associated with *E. coli* O157:H7. At that time, CDC increased its estimates for illnesses associated with *E. coli* O157:H7 because surveillance data allowed a more detailed estimation of mild illnesses not resulting in physician consultation.[1] As FSIS stated in the February 11, 2000, meeting notice, although not all these illnesses were attributable to beef, the increase in illness associated with *E. coli* O157:H7 indicated that this pathogen occurred more frequently than was previously thought (65 FR 6882). CDC continues to collect data on the incidence of reported cases. Based on recent preliminary FoodNet data, there does not appear to be a sustained decrease in disease associated with *E. coli* O157:H7.[2]

Also at the public meeting, an FSIS representative presented information on the new *E. coli* O157:H7 testing procedures that the Agency began using on September 3, 1999. This method is approximately four times more sensitive

[1] For information on the estimates, see Mead, Paul S., *et al.*, ''Food-Related Illness and Death in the United States,'' *Journal of Emerging Infectious Diseases,* Vol. 5, No. 5, 1999.

[2] Morbidity and Mortality Weekly Report. 2002. Preliminary FoodNet Data on the Incidence of Foodborne Illnesses—Selected Sites, United States, 2001. Vol. 51, Number 15: 325–329.

than the previous method. Prior to the introduction of the new FSIS testing method, the prevalence of *E. coli* O157:H7 in raw ground beef samples tested was 0.149 percent. Using the new method between September 3, 1999, and September 8, 2002, the prevalence of *E. coli* O157:H7 in raw, ground beef samples tested was 0.797 percent. This increase in *E. coli* O157:H7 prevalence in raw ground beef samples suggests that the low rate of positive findings in the past may have had more to do with the sensitivity of the method and size of the sample being used than with the rarity of the pathogen.

Also at the February 29, 2000, public meeting, a representative from ARS presented information concerning a recent *E. coli* O157:H7 prevalence study (hereinafter referred to as the Elder study).[3] In this study of fed cattle, 28 percent (91 of 327) of fecal samples were positive for *E. coli* O157:H7. Previous studies of fed cattle had found a fecal prevalence of 2 percent (188 of 11,881 samples),[4] 4 percent (38 of 1046 samples),[5] 6 percent (14 of 240 samples),[6] and, for the study hereinafter referred to as the Smith study, 23 percent (707 of 3054 samples).[7]

Three multistate studies reported the apparent prevalence of feedlots containing one or more infected cattle. Even if one animal in a herd was found positive for *E. coli* O157:H7 the herd was considered positive for *E. coli* O157:H7. These estimates were 63 percent (63 of 100 feedlots),[8] 100 percent (6 of 6 feedlots),[9] and 100 percent (5 of 5 feedlots).[10] Although all the studies cited in the preceding sentence found a high proportion of herds to contain at least one animal that was positive for *E. coli* O157:H7, except for the Smith study, these studies did not find many animals within a specific herd to be positive for *E. coli* O157:H7. The Smith and Elder studies found higher within herd *E. coli* O157:H7 prevalence than all the other studies cited. That is, these studies found more animals within a specific herd to be positive for *E. coli* O157:H7 than the other studies did.

The study from ARS mentioned above (Elder 2000) also addressed the prevalence of *E. coli* O157:H7 on carcasses at preevisceration, at postevisceration, and at postprocessing. *E. coli* O157:H7 was found on 43 percent (148 of 341) of the preevisceration carcasses, 18 percent (59 of 332) of the postevisceration carcasses, and 2 percent (6 of 330) of the postprocessing carcasses.

In addition to fed cattle, culled breeding cattle (dairy and beef cows and bulls) are an important source of beef products. Four studies provided fecal prevalence evidence of *E. coli* O157:H7 of 1 percent (10 of 1412 samples),[11] 1 percent (52 of 4361 samples),[12] 2 percent (89 of 4031 samples),[13] and 3 percent (7 of 205 samples).[14]

Five multistate studies reported the apparent prevalence of breeding herds containing one or more infected cattle. These estimates were 24 percent (22 of 91 herds),[15] 61 percent (8 of 13 herds),[16] 75 percent (27 of 36 herds),[17] 87 percent (13 of 15 herds),[18] and 100 percent (6 of 6 herds).[19]

At the February 29, 2000, public meeting, FSIS presented preliminary results from the FSIS draft risk assessment for *E. coli* O157:H7 in ground beef. These preliminary results did not incorporate the evidence presented at this meeting from the ARS (Elder 2000). The best estimate of the prevalence of *E. coli* O157:H7 in live cattle destined for ground beef production was given as just over 10 percent. The bounds of uncertainty depended upon the class of animal considered, fed or culled, and ranged from less than 5 percent to greater than 15 percent. For plants that slaughter culled cattle, the estimated prevalence of *E. coli* O157:H7–contaminated 2000 pound combo-bins was given as 15 percent, with a range from greater than 5 percent to less than 30 percent. For steers and heifers, the estimated combo bin prevalence was over 40 percent, with a lower bound greater than 20 percent and an upper bound less than 60 percent.

Trim from bins is mixed together and ground to achieve product with specific fat content. The mixing of the contents of several combo bins disperses the *E. coli* O157:H7 organisms and results in ground product with a lower concentration, but higher prevalence, of contamination than in the original bins. Preliminary risk assessment estimates suggested that nearly 90 percent of grinder loads had at least one *E. coli* O157:H7 organism present with a lower bound greater than 70 percent and an upper bound greater than 95 percent.

The estimates presented at the public meeting were preliminary and were premised on the assumption that slaughter plants were achieving an average of about 1.5 log10 reduction of *E. coli* O157:H7 as a result of decontamination measures taken after dehiding and after carcass splitting. At this time, FSIS does not have information about the level of log reduction for *E. coli* O157:H7 being achieved in specific slaughter operations or thereafter, or about whether the 1.5 log10 reduction modeled in the risk assessment is comparable to what industry is achieving today. If validated interventions being used today result in more than a 1.5 log10 reduction, and

[3] Robert. O. Elder, *et al.* Correlation of Enterohemorrhagic *Escherichia coli* O157 Prevalence in Feces, Hides, and Carcasses of Beef Cattle During Processing. Proc Natl Acad Sci USA. Mar 2000. 97(7): 2999–3003.

[4] Dargatz DA, Wells SJ, Thomas LA, *et al.* Factors associated with the presence of *Escherichia coli* O157 in feces of feedlot cattle. J. Food Prot. 1997; 60(5): 466–470.

[5] Hancock DD, Besser TE, Rice DH, *et al.* Multiple sources of *Escherichia coli* O157 in feedlots and dairy farms in the Northwestern USA. Prev. Vet. Med. 1998; 35: 11–19.

[6] Hancock DD, Rice DH, and Besser TE. 1999. Prevalence of *E. coli* O157:H7 in feedlot cattle at slaughter plants. Study funded by National Cattlemen's Beef Association. Washington State University.

[7] Smith, D, Blackford M, Younts S, *et al.* 2001. Ecological relationships between the prevalence of cattle shedding *E. coli* O157:H7 and characteristics of the cattle or conditions of the feedlot pen. J. Food Prot. 64(12): 1899–1903.

[8] Dargatz DA, Wells SJ, Thomas LA, *et al.* Factors associated with the presence of *Escherichia coli* O157 in feces of feedlot cattle. J. Food Prot. 1997; 60(5): 466–470.

[9] Hancock DD, Besser TE, Rice DH, *et al.* Multiple sources of *Escherichia coli* O157 in feedlots and dairy farms in the Northwestern USA. Prev. Vet. Med. 1998; 35: 11–19.

[10] Smith, D, Blackford M, Younts S, *et al.* 2001. Ecological relationships between the prevalence of cattle shedding *E. coli* O157:H7 and characteristics of the cattle or conditions of the feedlot pen. J. Food Prot. 64(12): 1899–1903.

[11] Hancock DD, Besser TE, Kinsel ML, Tarr PI, Rice DH, and Paros MG. The prevalence of *Escherichia coli* O157 in dairy and beef cattle in Washington State. Epidemiol. Infect. 1994; 113: 199–207.

[12] Garber L, Wells S, Schroeder-Tucker L, *et al.* Factors associated with fecal shedding of verotoxin-producing *Escherichia coli* O157 on dairy farms. J. Food Prot. 1999; 62(4): 307–312.

[13] Besser TE, Hancock DD, Pritchett LC, *et al.* Duration of detection of fecal excretion of *Escherichia coli* O157:H7 in cattle. J Infect. Dis. 1997; 175: 726–729.

[14] Rice DH, Ebel ED, Hancock DD, *et al.* *Escherichia coli* O157 in cull dairy cows on farm and at slaughter. J. Food Prot. 1997; 60(11): 1386–1387.

[15] Garber L, Wells S, Schroeder-Tucker L, *et al.* Factors associated with fecal shedding of verotoxin-producing *Escherichia coli* O157 on dairy farms. J. Food Prot. 1999; 62(4): 307–312.

[16] Hancock DD, Besser TE, Rice DH, *et al.* A longitudinal study of *Escherichia coli* O157 in fourteen cattle herds. Epidemiol. Infect. 1997; 118: 193–195.

[17] Hancock DD, Rice DH, Herriot DE, *et al.* Effects of farm manure handling practices on *Escherichia coli* O157 prevalence in cattle. J. Food Prot. 1997; 60(4): 363–366.

[18] Lagreid WW, Elder RO, and Keen JE. Prevalence of *Escherichia coli* O157:H7 in range beef calves. Epidemiol. Infect. 1999; 123(2): 291–298.

[19] Hancock DD, Besser TE, Rice DH, *et al.* Multiple sources of *Escherichia coli* O157 in feedlots and dairy farms in the Northwestern USA. Prev. Vet. Med. 1998; 35: 11–19.

other factors remain the same, then the prevalence of *E. coli* O157:H7 would be a lower percentage than that reflected in the preliminary risk assessment estimates. FSIS requests comment and data on these issues. FSIS is still reviewing the draft risk assessment and may further modify its estimates in the future.

As noted above, on November 5, 2001, FSIS announced the availability of, and requested comments on, its draft risk assessment for *E. coli* O157:H7 in ground beef (66 FR 55912). At that time, FSIS also submitted the draft risk assessment to the National Academies of Science (NAS) for scientific peer review. FSIS received 6 comments in response to its request for comments in the **Federal Register**. FSIS is currently reviewing those comments. FSIS expects to receive NAS' comments concerning the risk assessment shortly and may revise the risk assessment based on NAS' comments and the public comments received.

Relevant Data Requiring Reassessment

Studies before those of Smith and Elder suggested that *E. coli* O157:H7 prevalence rates within herds were low. A 1992–1993 FSIS baseline survey of steer and heifer carcasses found 4 (0.2%) of these carcasses *E. coli* O157:H7–positive, and a 1993–1994 FSIS baseline survey of cow and bull carcasses found none of the carcasses positive for *E. coli* O157:H7. The USDA's Animal and Plant Health Inspection Service-Veterinary Services-National Animal Health Monitoring System also completed on-farm surveys of dairy cattle in 1992 and feedlot cattle in 1994. These national surveys found *E. coli* O157:H7 in 0.4 percent of dairy calves sampled and 1.6 percent of feedlot cattle sampled. Thus, these results suggested that *E. coli* O157:H7 occurred in cattle at a prevalence level that would require substantial numbers of samples to detect the organism in a population.

The results from FSIS' *E. coli* O157:H7 testing program since FSIS began using its new testing method and certain research studies discussed above provide evidence that *E. coli* O157:H7 is more prevalent than was thought before these data became available, and that this pathogen may be a hazard that is reasonably likely to occur at all stages of handling raw beef products. The specific studies cited above that suggest that *E. coli* O157:H7 is more prevalent than previously thought in live cattle and carcasses are the study by Elder *et al.* and the study by Smith *et al.* (both cited above).

FSIS is publishing this document to advise federally inspected establishments of the Agency's position on one aspect of its public health strategy to deal with *E. coli* O157:H7 contamination and to provide an opportunity for comment on that position, as FSIS continues to develop a comprehensive strategy. As explained under the HACCP discussion above, the regulations require that establishments reassess their HACCP plans whenever any changes occur that would affect their hazard analysis or alter their HACCP plans. The availability of FSIS testing data since FSIS began using the new testing method and the information from the Smith and Elder studies presented above is a change that requires establishments to reassess their HACCP plans because these data provided evidence that *E. coli* O157:H7 is more prevalent than was thought before this data became available.

The Elder and Smith studies were completed in 2000 and 1999, respectively, and published thereafter, and FSIS surveillance data from its new testing method became available in 1999. FSIS has not previously informed manufacturers of beef products that it believes that the availability of these data constitutes a change that could affect an establishment's hazard analysis and alter its HACCP plans for raw beef products. The preliminary results of the draft risk assessment on *E. coli* O157:H7 support FSIS' position. No more recent data have become available that would affect FSIS' conclusions regarding the prevalence of *E. coli* O157:H7.

Based on anecdotal information from its inspection program personnel and from In-Depth Verification Reviews (IDVs), FSIS believes that most establishments have not taken the data discussed above into account in their hazard analysis, and that establishments might not have addressed *E. coli* O157:H7 in their HACCP plans or, for grinding establishments, in programs that serve as prerequisites to HACCP plans. Therefore, the Agency is issuing this notice informing the public of its views concerning the implications of the *E. coli* O157:H7 data discussed above.

According to the data from the studies discussed above, the fecal prevalence of *E. coli* O157:H7 in fed cattle is significantly higher than the fecal prevalence of *E. coli* O157:H7 in culled breeding cattle (dairy, beef cows, and bulls). However, FSIS believes that all establishments producing raw beef products, including those slaughtering culled breeding cattle or using meat from culled breeding cattle in processing, need to reassess their HACCP plans because the data show that *E. coli* O157:H7 is present in culled breeding cattle, because most slaughter establishments slaughter both fed and culled breeding cattle, and because most beef processing establishments use meat from both fed and culled breeding cattle. FSIS believes that establishments that slaughter both types of cattle or use both types of meat in processing would not develop different HACCP plans for slaughtering fed versus culled breeding cattle or for processing meat from fed versus culled breeding cattle.

Prior Reassessments Based on Relevant *E. coli* O157:H7 Data

Because all establishments are required to reassess their HACCP plans at least annually according to § 417.4(a)(3), all establishments should have reassessed their HACCP plans at least once, and possibly twice, since the February 29, 2000, public meeting. As noted above, at that public meeting, FSIS, ARS, and the CDC presented some of the data that provided evidence that *E. coli* O157:H7 was more prevalent than previously thought at that time, and that this pathogen may be a hazard that is reasonably likely to occur at all stages of handling raw beef products. In addition, FSIS placed the transcript from the public meeting on its web site shortly after the meeting. Finally, FSIS released the draft risk assessment, which discussed the published data that provide evidence that *E. coli* O157:H7 is more prevalent than previously thought, on its web page in November 2001.

Because FSIS made some of the data discussed above available in 2000 and released the draft risk assessment in 2001, establishments that produce raw beef products already may have reassessed their HACCP plans based on this data to determine whether *E. coli* O157:H7 is a hazard reasonably likely to occur in their production of these products, and, if so, whether their HACCP plans appropriately address this hazard. Establishments that already have taken the relevant *E. coli* O157:H7 data into account in a reassessment are not required to conduct another reassessment of their HACCP plans, provided these establishments have evidence of their reassessment based on this data that is available to FSIS inspection program personnel in their hazard analysis, HACCP plans, or record of reassessment. Establishments should have taken into account all of the data discussed above that suggest that *E. coli* O157:H7 is more prevalent than previously thought: the FSIS testing data and the data from the Smith and Elder studies.

Outcomes of Reassessments Based on Relevant *E. coli* O157:H7 Data

Establishments that produce raw beef products that have not conducted a reassessment of their HACCP plans based on the relevant *E. coli* O157:H7 data discussed above to determine whether *E. coli* O157:H7 is a hazard reasonably likely to occur in their production of these products, and, if so, whether their HACCP plans appropriately address this hazard, are required to conduct a reassessment. If this pathogen is a hazard reasonably likely to occur, then it must be addressed in a HACCP plan through one or more CCPs designed to control the pathogen.

Even establishments that produce intact product will need to reassess their HACCP plans based on the new *E. coli* O157:H7 data. These establishments are required to reassess their HACCP plans because much intact beef product may be used to make non-intact product, such as ground beef. According to § 417.2(a)(2), establishments are required to identify the intended use or consumers of the finished product. Therefore, to be able to determine the adequacy of their HACCP plans, establishments that produce intact beef products need to determine whether their products will be used to produce raw, non-intact product.

This document addresses only the need for HACCP plan reassessment. FSIS cannot predict the likelihood that an establishment producing raw beef products will need to incorporate, or alter, controls to prevent, eliminate, or reduce *E. coli* O157:H7 to an acceptable level (i.e., a level that would not be detectable using the FSIS testing method or a method with a sensitivity at least equivalent to FSIS' method) in one or more HACCP plans as a result of plan reassessment. FSIS does believe, however, that given the FSIS testing data and the data from the Elder and Smith studies discussed above, establishments should strongly consider the possibility that *E. coli* O157:H7 contamination is a hazard reasonably likely to occur in their production of beef products, especially if an establishment produces non-intact product that has been or could be adulterated with *E. coli* O157:H7 or produces intact product that is to be used for non-intact product, and this non-intact product has been or could be found to be adulterated with *E. coli* O157:H7.

In determining whether *E. coli* O157:H7 is a hazard reasonably likely to occur in the production process for their raw beef products, establishments should take into account whether their raw beef products have tested positive for *E. coli* O157:H7 in either FSIS or industry testing. They should also consider whether there is a reasonable likelihood of *E. coli* O157:H7 contamination of their raw beef products in the absence of controls (see § 417.2(a)(1)).

Although all establishments producing raw beef products are required to reassess their HACCP plans, some establishments may determine that they do not need to change their HACCP plans. For example, some establishments may already address *E. coli* O157:H7 in their HACCP plans. Even if these establishments did not take the FSIS testing data and the Smith and Elder data into account in their prior hazard analysis, they may determine that their HACCP plans are still adequate to prevent, eliminate, or reduce *E. coli* O157:H7 to an undetectable level in light of the data, and that these data do not affect their hazard analysis. Similarly, establishments that produce raw intact product that will not be further processed into raw, non-intact product may determine that these data do not affect their hazard analysis, and that their HACCP plans do not need to be changed.

Critical Control Points and Sanitation SOPs and Other Prerequisite Programs

The regulations require that establishments develop HACCP plans that include critical control points (CCPs): points, steps, or procedures in a food process at which a control can be applied, and, as a result, a food safety hazard can be prevented, eliminated, or reduced to acceptable levels. FSIS considers an acceptable reduction for *E. coli* O157:H7 to be a reduction to an undetectable level.

Because controls to reduce the risk of *E. coli* O157:H7 contamination when the product is still intact may be the best means of controlling the hazard, FSIS believes that slaughter establishments and deboning establishments should strongly consider putting in place one or more validated CCPs that are designed to eliminate or reduce *E. coli* O157:H7 and other pathogens. If such establishments have controls in place to address *E. coli* O157:H7 specifically, they cannot conclude that the pathogen is *not* a hazard reasonably likely to occur in the absence of those controls. FSIS believes that any interventions that slaughter and deboning establishments use to address *E. coli* O157:H7 should be incorporated into their HACCP plans. At this time, FSIS is not aware of any prerequisite programs that are appropriate for use in slaughter and deboning establishments to address *E. coli* O157:H7. FSIS advises that it intends to scrutinize very closely the hazard analyses and HACCP plans of those slaughter or deboning establishments that conduct, or have conducted, a reassessment and decide that an intervention for *E. coli* O157:H7 is not necessary.

According to the requirements of § 417.4(a)(1), establishments must validate CCPs to ensure that they can successfully apply a scientifically appropriate CCP to prevent, eliminate, or reduce *E. coli* O157:H7 under their commercial operating conditions (see 61 FR 38826–38827). Until establishments demonstrate that the CCP achieves the anticipated effect under actual in-plant conditions, effectiveness of the CCP is theoretical, and the plan is not validated. Based on information from inspection program personnel and IDVs, FSIS believes that many establishments have not validated their CCPs based on actual in-plant conditions.

Published scientific studies have demonstrated that there are effective decontamination methods that can be used for preventing, eliminating, or reducing *E. coli* O157:H7. Establishments can validate their CCPs for *E. coli* O157:H7 by ensuring that the operation of the CCP in their plant can meet the parameters of these studies, and by challenge studies using an appropriate surrogate for *E. coli* O157:H7 that could include, but not be limited to, *E. coli* and coliforms. There are no situations in which inspection program personnel will ask that establishments introduce pathogenic or harmful bacteria into the establishments to validate the effectiveness of CCPs. Establishments can ensure the effectiveness of their CCPs through monitoring, verification, and corrective action procedures in their written HACCP plans.

FSIS believes that establishments that receive product for grinding also should address *E. coli* O157:H7. These establishments can employ validated CCPs in their HACCP plans to address *E. coli* O157:H7. Interventions are becoming available to grinders. These establishments can also establish and require that specifications for the raw material that they purchase be met by suppliers. FSIS believes that grinders that have purchase specifications that require that all of their suppliers have one or more CCPs in their HACCP plans that are validated to eliminate or reduce *E. coli* O157:H7 below detectable levels and that ensure that these specifications are met may determine that no additional steps to address *E. coli*

O157:H7 are necessary in their production process for ground beef. However, given the nature of the pathogen, FSIS strongly recommends that grinders that have purchase specifications addressing *E. coli* O157:H7 determine whether CCPs preventing *E. coli* O157:H7 growth or contamination after product receipt are necessary.

Grinders could incorporate purchase specifications to prevent *E. coli* O157:H7-contaminated product from entering their establishment in their HACCP plans. However, the Agency also recognizes that some may argue that purchase specifications addressing *E. coli* O157:H7 do not lend themselves to a point, step, or procedure in a food process at which control can be applied (see definition of ''critical control point'' in § 417.1). Also, if grinding establishments have purchase specifications addressing *E. coli* O157:H7 that require that incoming product has been treated to eliminate or reduce *E. coli* O157:H7 to an undetectable level, and if they ensure that these specifications are met, these establishments may determine that they do not need a separate CCP to eliminate or reduce *E. coli* O157:H7 after receipt of product. In recognition of these arguments, FSIS advises that grinders may choose not to include purchase specifications addressing *E. coli* O157:H7 as CCPs in their HAACP plans. If they do not include these purchase specifications as CCPs in their HACCP plans, however, establishments should incorporate them in their Sanitation SOPs, which FSIS has recognized as prerequisites for HACCP (61 FR 38834), or in other programs that are prerequisites for HACCP (prerequisite programs).

Current regulations do not include specific requirements for prerequisite programs other than Sanitation SOPs. However, under § 417.5(a)(1), establishments must maintain records of their hazard analysis, including all supporting documentation. According to the regulations, the hazard analysis must include the food safety hazards that can occur before, during, and after entry into the establishment (§ 417.2(a)). If an establishment has determined in its hazard analysis that *E. coli* O157:H7 is a hazard that can occur at one of these points but is *not* reasonably likely to occur in the establishment's processing because the establishment has a prerequisite program with purchase specifications addressing *E. coli* O157:H7, information concerning the prerequisite program is supporting documentation that must be maintained under § 417.5(a)(1). All documentation supporting the hazard analysis must be made available to FSIS upon request (§ 417.5(f)).

FSIS expects the supporting documentation concerning prerequisite programs other than Sanitation SOPs to include the programs' procedures and operational controls in writing. In addition, FSIS expects the documentation to include records that document that the program is effective, and that *E. coli* O157:H7 is not reasonably likely to occur. Without this documentation, FSIS would question the adequacy of the establishment's HACCP system and hazard analysis.

Establishments should revise their prerequisite programs, as necessary, to ensure their effectiveness and should take appropriate corrective actions when they determine that their prerequisite programs may have failed to prevent contamination or adulteration of product. If establishments that address *E. coli* O157:H7 in their prerequisite programs and not in their HACCP plans produce *E. coli* O157:H7-positive product, this occurrence would be considered a ''deviation not covered by a specified corrective action'' or an ''unforeseen hazard'' (§ 417.3(b)). Therefore, these establishments would be required to take the corrective actions, including reassessment, set forth in § 417.3(b).

As with other prerequisite programs that include purchase specifications addressing *E. coli* O157:H7, establishments with Sanitation SOPs that include purchase specifications addressing *E. coli* O157:H7 may conclude that the pathogen is not reasonably likely to occur in the establishments' processing because of the Sanitation SOPs. However, unlike other prerequisite programs, current regulations provide requirements for Sanitation SOPs and ensure that FSIS has access to establishments' records documenting the implementation and monitoring of the Sanitation SOPs. According to the Sanitation SOP regulations, establishments that include purchase specifications addressing *E. coli* O157:H7 in their Sanitation SOPs will need to evaluate routinely the effectiveness of these purchase specifications in preventing the adulteration of their products. They will also need to revise these purchase specifications as necessary to keep them effective (*see* § 416.14). Moreover, they will need to maintain records to document the implementation, monitoring, and correction of their purchase specifications (*see* §§ 416.15 and 416.16).

Under § 416.15, establishments are required to conduct corrective actions when they determine that their Sanitation SOP may have failed to prevent direct contamination or adulteration of product; however, under § 416.15, establishments are not required to reassess their Sanitation SOPs when they determine that their Sanitation SOPs may have failed to prevent direct contamination or adulteration of product. If establishments that address *E. coli.* O157:H7 in their Sanitation SOPs and not in their HACCP plans produce *E. coli.* O157:H7-positive product, this occurrence would be considered a ''deviation not covered by a specified corrective action'' or an ''unforeseen hazard'' (§ 417.3(b)). Therefore, these establishments would be required to take the corrective actions, including reassessment, set forth in § 417.3(b).

FSIS received a petition dated December 30, 1999, signed by numerous meat and poultry trade organizations (see 65 FR 30952 for information on this petition and the text of this petition). The petition stated that a HACCP plan is only one part of a plant's overall food safety system, and that other integral components of that system include Sanitation SOPs, various good manufacturing practices, and other prerequisite programs that are needed to form the foundation for the HACCP system. The petition stated that FSIS should recognize these other components of establishments' food safety systems when determining whether HACCP plans are adequate.

In this notice, FSIS is recognizing that establishments receiving raw beef product for grinding can effectively include purchase specifications addressing *E. coli.* O157:H7 in Sanitation SOPs and other prerequisite programs. FSIS has made no general determinations concerning food safety hazards other than *E. coli.* O157:H7 and no general determinations concerning what circumstances other than grinders' receiving product that meets purchase specifications can be addressed through prerequisite programs, rather than HACCP. If establishments, other than grinders, address any food safety hazard in a prerequisite program, and if grinders include more than purchase specifications addressing *E. coli.* O157:H7 in their prerequisite programs, FSIS will review the establishments' supporting documentation for these programs and will make a determination concerning the adequacy of these programs, applicable HACCP plans, and hazard analyses on a case-by-case basis.

FSIS does not believe that establishments receiving raw beef product for grinding will be able to substitute Sanitation SOPs or other

prerequisite programs addressing *E. coli.* O157:H7 for their HACCP plans in their entirety because the Agency does not believe that *E. coli.* O157:H7 contaminated product from outside sources would be the only food safety hazard reasonably likely to occur in the production of ground beef in the absence of controls. For establishments receiving raw beef product for grinding, FSIS believes that Sanitation SOPs or other prerequisite programs *together with* HACCP plans function as food safety HACCP systems that effectively produce safe, unadulterated product.

Verification

All establishments are required to conduct on-going verification activities to ensure that their HACCP plans are effectively implemented (§ 417.4(a)(2)). Whether the establishment has CCPs addressing *E. coli.* O157:H7 in their HACCP plans or has concluded the pathogen is *not* reasonably likely to occur because it has purchase specifications that prevent the pathogen from entering the facility, the establishment is required to conduct on-going verification activities to ensure that any CCP is adequately addressing *E. coli.* O157:H7, or that the purchase specifications continue to prevent the pathogen from entering the facility. FSIS recommends that establishments' verification activities include testing for *E. coli.* O157:H7.

State Inspection Programs and Programs Outside the United States (U.S.)

Establishments in states that have their own inspection programs that produce raw beef products and that have not already done so must reassess their HACCP plans in light of the *E. coli.* O157:H7 data discussed above. Similarly, producers outside the U.S. that import raw beef product into the U.S. that have not already done so will have to reassess their HACCP systems based on the data discussed above.

FSIS Actions To Enforce and Facilitate Compliance With the Reassessment Requirement

Establishments that produce raw beef products are to reassess their HACCP plans unless they have already reassessed their HACCP plans based on the *E. coli.* O157:H7 data that suggest that the pathogen may be more prevalent than previously thought, and they have evidence of this reassessment that is available to FSIS inspection program personnel in their hazard analysis, HACCP plans, or record of reassessment. Although establishments are not required to maintain a written record of their reassessment, FSIS encourages them to do so.

The Agency intends to instruct its inspection program personnel to determine whether reassessments were conducted or are being conducted and to begin making this determination on November 6, 2002. At this time, inspection program personnel will ensure that all establishments producing raw beef products are aware that the Agency has issued this notice and will ensure that those establishments that have not yet reassessed their HACCP plans based on the relevant *E. coli* O157:H7 data discussed above begin their reassessment in time to complete it by the following date according to plant size: December 6, 2002 for large plants (all establishments with 500 or more employees); February 4, 2003 for small plants (all establishments with 10 or more employees but fewer than 500); and April 7, 2003 for very small plants (all establishments with fewer than 10 employees or annual sales of less than $2.5 million). FSIS will not begin enforcing the required reassessment until December 6, 2002 for large plants; February 4, 2003 for small plants; and April 7, 2003 for very small plants. By looking into establishments' reassessment actions prior to the time they are required to complete their reassessments, FSIS will ensure that all establishments producing raw beef products, including those that are small and very small businesses that may not belong to a trade association, are aware of this notice. FSIS will mail this notice to all small and very small plants prior to the effective date for reassessment.

The Agency then intends to instruct its inspection program personnel to collect data concerning the outcomes of the required reassessment and to begin collecting this data on: December 23, 2002 for large plants; February 19, 2003 for small plants; and April 21, 2003 for very small plants. Inspection program personnel will collect data concerning (1) whether establishments reassessed their HACCP plans based on the relevant *E. coli* O157:H7 data prior to or after publication of this notice; (2) whether establishments changed their HACCP plans or prerequisite programs as a result of a reassessment that took this data into account; (3) if establishments changed their HACCP plans or prerequisite programs, how the plans or prerequisite programs were changed; and (4) if establishments did not change their HACCP plans or prerequisite programs, the reasons the plans or programs were not changed. If an establishment does not reassess its HACCP plans in accord with this document, FSIS will evaluate the establishment's compliance with Part 417.

Guidance

FSIS is making available guidelines entitled, ''Guidance for Beef Grinders and Suppliers of Boneless Beef and Trim Products'' on the Internet (*http://www.fsis.usda.gov/oppde/rdad/publications.htm*). In this guidance material available today, FSIS is providing recommendations for reducing the occurrence of *E. coli* O157:H7 and *Salmonella* in ground beef, boneless beef, and trim products. FSIS initially made this guidance material available to the public in March 1998. FSIS has expanded this guidance material to include guidance for suppliers of boneless beef and trim and recommendations for reducing *Salmonella* in ground beef, boneless beef, and trim products.

In the guidance material, to further reduce the risk of *E. coli* O157:H7 contamination after product receipt, FSIS is recommending that grinders receiving product from more than one supplier prevent any mixing of product from different suppliers, unless they can demonstrate that the source materials from the different suppliers have been adequately treated to eliminate or reduce *E. coli* O157:H7 to an undetectable level. Keeping product from different suppliers separate will prevent any potentially *E. coli* O157:H7-contaminated source material from adulterating source materials from other suppliers. Also, by keeping product from different suppliers separate, grinders will be able to identify the potential source of any *E. coli* O157:H7-contaminated product should the pathogen be detected. If FSIS finds samples of ground beef produced from suppliers' source materials outside the grinding establishment or retail facility to be positive for *E. coli* O157:H7, FSIS intends to notify the supplying establishments that they may have supplied *E. coli* O157:H7-positive product to a grinding establishment or retail facility.

FSIS intends to gather pertinent information concerning suppliers from Federal grinding establishments and retail facilities. If FSIS confirms that ground product is positive for *E. coli* O157:H7, FSIS intends to obtain from Federal grinding establishments the following information concerning their suppliers of the source materials: the name, point of contact, and phone number for the establishments supplying the source materials for the lot of ground beef sampled; the supplier lot numbers and production dates; and any other information that would be

useful to suppliers that may have supplied *E. coli* O157:H7-positive product to Federal grinding establishments. Similarly, at the time FSIS collects samples of ground beef from retail facilities, FSIS will obtain from the retail facility the names and establishment numbers of the establishments supplying the source materials for the lot of ground beef sampled, the supplier lot numbers and production dates, and any other information that would be useful to suppliers if they are later notified of an *E. coli* O157:H7 positive finding.

Under § 320.1(b)(1), establishments and retail facilities are required to keep records of each transaction involving their purchasing or receiving any meat or meat food product. These records must show the name or description of the articles they purchase or receive (§ 320.1(b)(1)(i)) and the name and address of the seller of the articles they purchase (§ 320.1(b)(1)(iv)). Establishments and retail facilities must provide FSIS access to these records (§ 320.4, 21 U.S.C. 642). FSIS expects that supplier lot numbers and production dates are normally available at Federal grinding establishments and retail facilities. In addition, FSIS expects that establishments or retail facilities would normally obtain the contact information FSIS is collecting.

In addition, FSIS is making available on the Internet address previously listed new guidance material on reducing the occurrence of *E. coli* O157:H7 for beef slaughter establishments and for live animal producers. In the guidance material for beef slaughter establishments, FSIS has included examples of published studies of decontamination methods that can be used as critical control points addressing *E. coli* O157:H7.

The Agency invites comments on the guidance materials it is making available. In the guidance materials, FSIS is emphasizing that it is important for everyone who is involved in producing beef products to have in place measures designed to prevent, eliminate, or reduce the presence of *E. coli* O157:H7 in their products.

In both the guidance material for beef grinders and suppliers of boneless beef and trim products and the guidance material for beef slaughter establishments, FSIS is recommending that establishments consider that *E. coli* O157:H7 prevalence may be higher in April through September than during other times of the year, and that they may have to account for this increased prevalence in their HACCP systems. Several studies show that the period from June to September is a high prevalence season.[20] In addition, FSIS has recently reviewed establishment testing data that show greater *E. coli* O157:H7 prevalence in April through September. To account for increased *E. coli* O157:H7 prevalence, establishments may need to conduct more frequent or more rigorous verification activities, and they may need to employ more rigorous interventions, during April through September.

Finally, at the Internet address previously listed, FSIS is making available guidance material on the procedures for joint FSIS and FDA approval of ingredients and sources of radiation, including antimicrobials, used in the production of meat and poultry products and specific guidance on the use and labeling of ingredients and sources of radiation used to reduce microorganisms, particularly *E. coli* O157:H7, on beef carcasses, ground beef, and beef trimmings. This guidance document also includes a discussion on direct and secondary direct food additives and the appropriate use of the ingredient statement on the label of treated meat.

FSIS E. coli O157:H7 Testing Program

Currently, FSIS tests only raw ground beef products for *E. coli* O157:H7. In addition to continuing to test for *E. coli* O157:H7 in raw ground beef, FSIS is considering testing raw beef trimmings and other intact materials used in non-intact product and beef carcasses and parts (primals and subprimals) that will be processed into non-intact product. FSIS is considering testing trimmings, other source materials for non-intact product, and carcasses and parts that will be processed into non-intact product because controls to reduce the risk of *E. coli* O157:H7 when the product is still intact may be among the best ways to control the hazard. FSIS testing would verify the effectiveness of these controls. Such controls would include interventions used at slaughter, proper chilling practices, and segregating product that has been treated with interventions from product that has not. The only treatment available to eliminate *E. coli* O157:H7 in raw, non-intact product (*e.g.*, ground beef, blade tenderized steaks, and blade tenderized roasts) is a full bactericidal treatment, such as irradiation or cooking. However, there are also treatments that can be used that have been shown to reduce significantly the level of this pathogen. At this time, FSIS has not finalized plans to begin *E. coli* O157:H7 testing of raw beef trimmings, other intact materials used in non-intact product, and beef carcasses and parts that will be processed into non-intact product.

Although it has not finalized its plans regarding verification activities at establishments that produce intact product, FSIS intends to conduct verification activities at establishments that supply intact product to grinding establishments when the Agency determines that a supplier may be responsible for *E. coli* O157:H7-positive ground product. In this situation, FSIS intends to conduct verification activities concerning the supplier's HACCP system and Sanitation SOPs. FSIS also intends to conduct verification tests on trim when the Agency finds ground product at a grinder that receives product from outside sources positive for *E. coli* O157:H7 and is able to identify the supplier.

FSIS received a petition from the Center for Science in the Public Interest (CSPI), dated July 1, 2002, requesting that, in addition to its current testing of raw, ground beef for *E. coli* O157:H7, FSIS conduct *E. coli* O157:H7 testing of raw beef carcasses and beef trim. In their petition, CSPI also stated that slaughterhouses should be required to conduct *E. coli* O157:H7 testing of carcasses and trimmings. FSIS has posted a copy of the petition on the Internet at the address previously listed.

FSIS also received a letter from Excel Corporation, dated June 10, 2002, that included recommendations for changing FSIS'' testing program. Excel Corporation stated that FSIS'' sampling frequency should be based on what scientific evidence shows about the applied intervention's effectiveness in reducing *E. coli* O157:H7. Excel also stated that carcasses would need to be sampled more frequently than trim and trim more frequently than ground beef to reach the same level of statistical verification of the effectiveness of an intervention process.

Excel also recommended that FSIS provide that ground beef that has been tested and found negative for *E. coli* O157:H7 could be labeled to indicate

[20] Garber, L., *et al.*, Factors associated with the shedding of verotoxin-producing *Escherichia coli* O157 on dairy farms. J Food Prot. 1999; 62(4): 307–312; Hancock, D.D., *et al.*, The prevalence of *Escherichia coli* O157 in dairy and beef cattle in Washington State. Epidemiol Infect. 1994; 113: 199–207; Hancock D., Personal communication. Ongoing research project in collaboration with FDA-CVM. 2001; Hancock, D.D., *et al.*, Effects of farm manure handling practices on *Escherichia coli* O157 prevalence in cattle. J Food Prot. 1997; 60(4): 363–366. Heuvelink, A.E., *et al.*, Occurrence of verocytotoxin-producing *Escherichia coli* O157 on Dutch dairy farms. J Clin. Microbiol. 1998; Dec: 3480–3487; Van Donkersgoed, J.T., *et al.*, The prevalence of vertoxins, *Escherichia coli* O157:H7, and *Salmonella* in the feces and rumen of cattle at processing. Can Vet J. 1999; 40:332–338.

this fact, so that FSIS program personnel would reduce their sampling of this product once it is at retail. Excel recommended the following statement be allowed on product that tests negative for *E. coli* O157:H7: ''Product sampled and sample tested and found negative for *E. coli* O157:H7.'' FSIS has posted a copy of the letter on the Internet.

In modifying its verification sampling and testing program for *E. coli* O157:H7, FSIS will consider the data that its inspection program personnel collect concerning establishments'' actions in response to the required HACCP plan reassessment and comments received concerning the Agency's *E. coli* O157:H7 testing program, the CSPI petition, and the letter from Excel Corporation.

FSIS Directive 10,010.1

According to the Agency's current sampling and testing program instructions in FSIS Directive 10,010.1, FSIS does not typically collect raw ground beef samples for *E. coli* O157:H7 testing at establishments that conduct activities addressing *E. coli* O157:H7 that are specified in the Directive, including testing for *E. coli* O157:H7. Recently, FSIS found that some of these establishments producing raw ground beef have had problems with *E. coli* O157:H7 contamination. Therefore, FSIS is in the process of revising the Directive so that no establishments producing raw ground beef will be exempt from FSIS *E. coli* O157:H7 sampling and testing. FSIS intends to sample and test product from all grinding establishments at this time. FSIS will also be developing a risk-based verification program that takes into account such factors as volume of production and effectiveness of interventions.

FSIS also intends to revise Directive 10,010.1 to make it consistent with HACCP. According to the existing Directive, if FSIS collects a raw ground beef sample from an establishment that tests positive for *E. coli* O157:H7, FSIS must continue to collect samples from that establishment until the Agency has obtained 15 consecutive negative test results.

FSIS intends to remove this provision from the Directive because FSIS believes that this policy is inconsistent with HACCP. Under HACCP, it is the establishment's responsibility to take appropriate corrective actions when a sample tests positive for *E. coli* O157:H7.

When FSIS has removed from the Directive the provision requiring 15 consecutive negative FSIS *E. coli* O157:H7 test results following an FSIS *E. coli* O157:H7 positive test result, FSIS will exercise its discretion in determining the appropriate number of follow-up samples to collect and test and will make this determination based on the suspected cause of *E. coli* O157:H7 contamination and the establishment's corrective action.

The current Directive defines the ''sampled lot'' as all raw ground beef products produced between performance of complete cleaning and sanitization procedures for all equipment used in handling or processing a raw ground beef product. FSIS believes that this definition is too prescriptive, and that, under HACCP, establishments should be given more flexibility concerning the definition of the sampled lot. Therefore, FSIS is revising the Directive to recognize the establishment's definition of the sampled lot, provided the establishment has a scientific or other supportable basis for defining the sampled lot.

FSIS cautions, however, that an establishment's defined lot size does not relieve an establishment from its responsibility to consider whether there are connections between lots. For example, if multiple lots of raw ground product were produced from source materials from the same production lot of a single supplier, and some of this product was found positive for *E. coli* O157:H7, FSIS would expect the establishment to have a scientific basis that justifies why any raw ground product produced from those source materials should *not* be considered to be adulterated.

Finally, FSIS intends to revise the Directive to specify that the Agency will only collect samples of product that has passed pre-shipment record review in accordance with § 417.5(c).

FSIS does not intend to discontinue its *E. coli* O157:H7 testing program. By conducting its own verification sampling and testing program, FSIS will have meaningful data on the occurrence of *E. coli* O157:H7 in beef processing operations. FSIS invites comment on the issues related to FSIS Directive 10.010.1.

Comments

In response to the February 11, 2000, notice announcing the February 29, 2000, public meeting, FSIS received 294 comments, 285 of which were identical comments. Comments were from consumers, consumer groups, industry associations, a food animal concerns organization, and an FSIS employee. Comments addressed various issues including FSIS'' policy concerning non-intact products announced in the January 19, 1999, policy statement, FSIS and industry testing for *E. coli* O157:H7, and the FSIS *E. coli* O157:H7 risk assessment data that were presented at the February 29, 2000, public meeting. In addition, several commenters responded specifically to the questions for consideration that FSIS listed in the February 11, 2000, notice.

FSIS considered these comments when it developed plans to make the intended changes to Directive 10,010.1 discussed above. FSIS will continue to consider these comments, any comments submitted in response to this notice, the data that its inspection program personnel collect concerning establishments' actions resulting from the required reassessment, and baseline data for raw beef components of ground beef and beef patties and, possibly, baseline data for carcasses, as it determines how it will modify its *E. coli* O157:H7 testing program and as it makes any additional changes to the Directive addressing the program.

E. coli O157:H7 in Intact and Non-Intact (Tenderized) Beef

In May 2001, FSIS requested that the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) answer several questions with regard to *E. coli* O157:H7 in blade-tenderized, non-intact beef. NACMCF reviewed data from Kansas State University to respond to these questions. A February 14, 2002, report from NACMCF that includes FSIS' questions and NACMCF's response to the questions is available on the Internet at: *http://www.fsis.usda.gov/OPHS/NACMCF/index.htm.*

Based on the Kansas State data, NACMCF concluded that non-intact, blade tenderized beef steaks could potentially contain an infective dose of *E. coli* O157:H7 in their interior. NACMCF also concluded that blade tenderized steaks do not present a greater risk to consumers than intact beef steaks with regard to *E. coli* O157:H7 if the meat is oven broiled and cooked to an internal temperature of 140°F or above. However, NACMCF did not conclude that blade tenderized steaks pose no greater risk than intact steaks when cooked by other methods or when cooked to lower temperatures. The report suggested that blade-tenderized steaks may pose a risk, particularly to immunocompromised individuals, when served very rare with cold spots (that is, when cooked to an internal temperature of less than 120°F). All of NACMCF's risk estimates were based on a worst case scenario that assumed a very high concentration (3 x

10^3 cfu/gm) of *E. coli* O157:H7 in raw product.

NACMCF concluded that there is insufficient data to assess whether non-intact, blade tenderized beef roasts present a greater risk to consumers than intact beef roasts with regard to *E. coli* O157:H7 if prepared similarly to intact beef roasts.

Similarly, NACMCF concluded that there was insufficient data to respond to the question of whether scientific evidence supports the need for a labeling requirement to distinguish between intact and non-intact products to protect the public.

The NACMCF report identifies research needs for addressing *E. coli* O157:H7 in blade tenderized steaks and makes recommendations to FSIS concerning the Agency's future requests to NACMCF about this issue. In the event of an outbreak or a sporadic case of illness attributed to the consumption of beef steak, the report recommends that the CDC and FSIS gather data on cooking practices for the product that caused the illness, the processing of this product, and the purchase locations of this product.

FSIS has also conducted a comparative risk assessment of intact (nontenderized) and non-intact (blade tenderized) steaks. The results of the risk assessment are consistent with those of NACMCF. The risk assessment concluded that the risk of *E. coli* O157:H7 illness is not greater for broiled tenderized steaks than for broiled non-tenderized steaks at temperatures between 110°F and less than 140°F, regardless of the initial *E. coli* O157:H7 contamination level or the susceptibility of the consumer. Also, the risk assessment concluded that the risk of illness associated with *E. coli* O157:H7 from broiled tenderized and broiled non-tenderized steaks cooked to 140°F is miniscule, regardless of the initial contamination level or susceptibility of the consumer. Finally, the FSIS risk assessment concluded that the risk of illness is slightly higher for grilled or fried tenderized steaks compared to grilled or fried non-tenderized steaks at temperatures between 110°F and 140°F. The FSIS comparative risk assessment of intact and non-intact (blade tenderized) steaks is still a draft document and is available on the Internet address at: *http://www.fsis.usda.gov/oppde/rdad/publications.htm.* FSIS invites comments on this risk assessment.

FSIS also received a letter dated August 27, 2002, from the National Cattlemen's Beef Association concerning a study that evaluated the surfaces of beef sub-primal cuts for the presence of *E. coli* O157:H7 prior to mechanical tenderization. According to this letter, the results of this study show that the incidence of *E. coli* O157:H7 on sub-primals is very low. FSIS is interested in evaluating the data from this study. The Agency may incorporate these data into its comparative risk assessment of intact and non-intact steaks. Therefore, these data may influence the comparative risk assessment.

FSIS is reviewing the NACMCF report and its draft risk assessment for *E. coli* O157:H7 in intact and non-intact (blade tenderized) steaks and will consider NACMCF's conclusions and the conclusions from the risk assessment with regard to the policy announced for non-intact products in the January 19, 1999, **Federal Register** (discussed above, under ''*E. coli* O157:H7 policy''). At this time, FSIS believes that the public health hazard presented by *E. coli* O157:H7 and the prevalence of *E. coli* O157:H7 in these products continues to support application of the policy announced in the January 19, 1999, **Federal Register**. There is a lack of data on industry and consumer practices for cooking pinned, needled, and blade tenderized steaks (*e.g.*, grilling, oven broiling, or frying) and a lack of data on the proportion of industry outlets and consumers that prepare these products according to each of these different methods. If FSIS obtains substantial and reliable data showing that industry and consumers customarily cook pinned, needled, and blade tenderized products in a manner that destroys *E. coli* O157:H7, FSIS would consider modifications to its policy concerning *E. coli* O157:H7 in these products.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on October 3, 2002.

Garry L. McKee,

Administrator.

[FR Doc. 02–25504 Filed 10–3–02; 11:15 am]

BILLING CODE 3410–DM–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The SBA has been made aware of the existence of small business manufacturers for Hand and Edge Tool Manufacturing, North American Industry Classification System (NAICS) 332212. Notices to waive the Nonmanufacturer Rule appeared in the **Federal Register** on August 28, 2002 (67 FR 55179) and July 27, 2002 (67 FR 47755). Comments from these notices were received from large and small business manufacturers. Our knowledge of the existence of small business manufacturers requires us to deny the waiver of the Nonmanufacturer for Hand and Edge Tool Manufacturing, NAICS 332212.

EFFECTIVE DATE: September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416, Tel: (202) 619–0422.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the

recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget North American Industry Classification System. The second is the Product and Service Code established by the Federal Procurement Data System.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 02–25263 Filed 10–4–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN 3245–AE44

Pre-Disaster Mitigation Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its regulations to implement the Pre-Disaster Mitigation Loan Program (Program), which is a five-year pilot program authorized by statute in 1999. The statute allows SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their property from disaster related damage. The Program was developed in support of the Federal Emergency Management Agency (FEMA) Pre-Disaster Mitigation Program and covers businesses located in eligible participating communities, as determined by FEMA. This rule also describes how much a person could borrow from SBA to provide post-disaster mitigation for a damaged primary residence.

DATES: This rule is effective November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Herbert L. Mitchell, Associate Administrator, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: The Program is a pilot authorized by statute at a level of $15 million for each of five (5) fiscal years from 2000 through 2004. The Program enables SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures that will protect them from disaster related damage. The Program was developed in support of FEMA's Pre-Disaster Mitigation Program, which covers businesses located in eligible communities as determined by FEMA. This program encourages prevention rather than relying solely on a response and recovery approach to emergency management. The purpose of the Program is to implement techniques and technologies that will mitigate the effects of natural disasters. Implementation will enable SBA to lend to small businesses in disaster prone areas to help them avert and lessen the costs of future disaster inflicted damages. This is the first time, since SBA has administered the disaster loan program beginning in 1953, that SBA is empowered to administer a pre-disaster mitigation loan program.

SBA's current Program rules were effective October 1, 1999. 64 FR 48275 (September 3, 1999). However, SBA has not made any loans under these rules for several reasons. First, SBA is required by statute to ''use mitigation techniques in support of a formal mitigation program established by the [FEMA] * * *'' 15 U.S.C. 636(b)(1)(C). In 1999, FEMA had not yet completely established its pre-disaster mitigation program, then known as ''Project Impact.'' Communities had to apply to FEMA to be accepted as a pre-disaster mitigation eligible community. This took time. Next, FEMA's pre-disaster mitigation program was placed on hold, pending appropriations in the FY02 Departments of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriations Act. On November 26, 2001, the appropriations act provided $25 million to FEMA for its pre-disaster mitigation grant program. FEMA is now re-evaluating, revisiting and revamping its pre-disaster program. Therefore, SBA decided to proceed with this final rule to provide clear guidance and complete instructions to the public to support the FEMA program.

On June 14, 2000, SBA published a proposed rule on the Program in the **Federal Register** requesting public comment (65 FR 37307). This final rule clarifies the application and loan approval processes and makes editorial changes to make the regulation more understandable. The final rule explains the Program, defines ''mitigation measure,'' provides the purpose of pre-disaster mitigation loans, and explains how to apply for the loans, the maximum amount and interest rate of the loans, how SBA makes Program funding decisions, and what happens if Program funds run out or an application is denied. The final rule also contains a new application package for the Program approved by the Office of Management and Budget.

SBA received only one comment, from FEMA, which suggests several minor changes.

First, FEMA suggests that SBA refer to the Program as a ''community based initiative'' instead of referencing it as Project Impact. We agree with FEMA's recommendation and have deleted any reference to Project Impact in the final rule.

Second, FEMA recommends that SBA clarify that an applicant for a pre-disaster mitigation loan needs to submit a ''written statement'' from a local or State coordinator and that the written statement must include the information contained in the regulation. We agree with FEMA's recommendation and use the phrase ''written statement'' consistently in this final rule along with an appropriate cross-reference to the requirements in § 123.408.

Third, FEMA requests that SBA add a clarifying sentence which states that ''the State or local coordinator's written statement does not constitute an endorsement or technical approval of the project and is not a guarantee that the project will prevent damage in future disasters.'' SBA agrees with this comment and adds the requested language to § 123.408.

SBA has not adopted one of FEMA's comments. FEMA requested that SBA delete the references to participating pre-disaster mitigation community locations in § 123.403(a) because these communities may grow and change over time. SBA decided to retain the references to participating pre-disaster mitigation communities in § 123.403(a) because these are general references and we encourage the public to contact FEMA for more detailed information. SBA anticipates that at a minimum, the general information will serve to inform applicants in unique communities (*e.g.*, the District of Columbia and Puerto Rico) that they may be eligible to participate in the Program.

In addition to the changes made in response to FEMA's comments, SBA

makes a few changes in this final rule for the purpose of clarification.

In § 123.21 (''What is a mitigation measure?'') SBA clarifies that mitigation measures can occur before a disaster (pre-disaster) or after a disaster (post-disaster). In addition, we include appropriate cross-references for further information on either pre-or post-disaster mitigation efforts for homes or businesses.

SBA also revised the final rule in an effort to accurately define borrowing limits for each mitigation category: pre-disaster mitigation loans for businesses; post-disaster mitigation loans for businesses; and post-disaster mitigation loans for homes. SBA did not alter the substance of text dealing with the borrowing limits, but simply changed the location of the information within the rule so that each borrowing limit is addressed under the appropriate mitigation category. To accomplish this, we deleted the proposed § 123.22 (''How much can your business borrow for mitigation?'') and we have relocated this information to § 123.204 (''How much can your business borrow for post-disaster mitigation?'') and § 123.405 (''How much can your business borrow with a pre-disaster mitigation loan?''). When relocating this information, SBA deleted the inappropriate text references to primary residences or personal property. These references should not have been included in the borrowing limit section for business mitigation loans. These references to primary residences or personal property should have been included in the section addressing the borrowing limit for mitigation loans for homes. As such, we have added a new § 123.107 (''How much can I borrow for post-disaster mitigation for my home?'').

Another change is included in §§ 123.400 (''What is the Pre-Disaster Mitigation Loan Program?'') and 123.401(a) (''What types of mitigation measures can your business include in its application for a pre-disaster mitigation loan?''). In these sections we inadvertently left out the word ''contents'' from the text. The Pre-Disaster Mitigation Loan Program is designed, in part, to support mitigation measures geared towards protecting commercial real property, leasehold improvements, and the contents of either. As such, SBA adds the word ''contents'' to the relevant §§ 123.400 and 123.401(a).

Proposed § 123.410 (''When will SBA make funding decisions?'') would have required SBA to wait to make funding decisions until 60 days after the opening of a 30-day application window. This would have allowed SBA to receive and process all applications before deciding which applications to fund. SBA has concluded, however, that there is no reason to delay funding decisions since each application is evaluated on its own merits and not in comparison to the other applications received during that application window. Accordingly, SBA has deleted proposed § 123.410. SBA has redesignated proposed §§ 123.411—123.413 as §§ 123.410—123.412, respectively.

SBA also has concluded that it should date stamp each application when it is received, rather than after it is screened for completeness. Since SBA will be using multiple screeners to review the applications, an applicant's ranking should not be dependent upon the efficiency or schedule of a particular screener. Date stamping upon receipt will eliminate this possibility. In addition, SBA has decided against time-stamping applications. Instead, applications that are received on the same date will be assigned a ranking through the use of a computerized random number generator. SBA believes this is a more equitable way to assign priorities to applications received essentially at the same time. New § 123.410 is revised to reflect these changes.

Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Chapter 35)

This rule is a ''significant'' regulatory action within the meaning of Executive Order 12866 and was reviewed by the Office of Management and Budget. As a new pilot program authorized at $15 million for 5 years, OMB determined that the Program raised potential budgetary, legal and policy issues and required coordination with another Federal agency (FEMA). In 1999 Congressional Budget Office (CBO) estimated that the SBA would require an annual appropriation of $3 million to cover the subsidy costs of the proposed program at a 22 percent subsidy rate. Outlays would be about $2 million in 2000 and $3 million in each year during the 2001–2004 period, assuming appropriations of the necessary amounts. CBO estimates that administrative costs, both for managing the Program and preparing a report to Congress required by the bill, would be well below $500,000 in any year.

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to prepare a final regulatory flexibility analysis describing the need for and objectives of the rule; a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis; and a description of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities. 5 U.S.C. 604(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

In the proposed rule, SBA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. The basis of the certification was that since Congress has limited the funding level for this pilot program, the program can only serve a limited number of small businesses. With a maximum loan amount of $50,000, the number of small businesses affected under the program would be 300. Even if the loan amounts did not reach the maximum level, and amounted to only $25,000 per loan, the number of small businesses affected would only be 600. SBA did not consider the number to be substantial, in view of the fact that there could be as many as some 13–16 million small businesses across the country. No comments were received on the certification.

SBA has also determined that the final rule will not have a significant economic impact on a substantial number of small businesses. While the amount of the loan may have a significant impact on the businesses that receive them, the loans will not be going to a substantial number of small businesses. As stated in the proposal, at the maximum level, the loans will only affect 600 small businesses. Also as stated in the proposal, there are 13 to 16 million small businesses across the country, and 600 is not a substantial number. Accordingly, the Administrator of the SBA hereby certifies to the Chief Counsel of Advocacy of the SBA that this rule will not have a significant economic impact on a substantial number of small businesses.

For the purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has submitted the Pre-Disaster Mitigation Small Business Loan Application (application) to the Office of Management and Budget (OMB) for review and OMB has given its clearance. SBA did not receive any comments from the public regarding this proposed collection of information and only non-substantive, clarifying changes have

been made to the proposed application package. The application will allow small businesses to apply for pre-disaster mitigation loans and will provide SBA with the information necessary to evaluate applicants. The application requests such information as name, address, location and type of mitigation project, type of business, management information, organization type, and financial information to permit SBA to determine repayment ability. The applicant will have to complete an application each time it applies for a pre-disaster mitigation loan. SBA estimates that the time necessary to complete an application for the Program will average 2 hours.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, to be in accordance with the standards set forth in section 3 of that Order.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small business.

13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR parts 121 and 123 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 636(b), 637(a), and 644(c), and 662(5); and sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

2. In § 121.302, add two sentences at the end of paragraph (c) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) * * * For pre-disaster mitigation loans, size status is determined as of the date SBA accepts a complete Pre-Disaster Mitigation Small Business Loan Application for processing. Refer to § 123.408 of this chapter to find out what SBA considers to be a complete Pre-Disaster Mitigation Small Business Loan Application.

* * * * *

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245.

2. Redesignate § 123.107 as a new § 123.21 and revise the section to read as follows:

§ 123.21 What is a mitigation measure?

A mitigation measure is something done for the purpose of protecting real and personal property against disaster related damage. You may implement mitigation measures after a disaster occurs (post-disaster) to protect against recurring disaster related damage, or before a disaster occurs (pre-disaster) to protect against future disaster related damage. Examples of mitigation measures include building retaining walls, sea walls, grading and contouring land, elevating flood prone structures, relocating utilities, or retrofitting structures to protect against high winds, earthquakes, flood, wildfires, or other physical disasters. Section 123.107 specifically addresses post-disaster mitigation for home disaster loans, and § 123.204 specifically addresses post-disaster mitigation for businesses. Sections 123.400 through 123.412 specifically address pre-disaster mitigation.

3. Add a new § 123.107 to read as follows:

§ 123.107 How much can I borrow for post-disaster mitigation for my home?

For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20 percent of the amount of your approved home disaster loan to repair or replace your damaged primary residence and personal property.

4. Add a new § 123.204 to read as follows:

§ 123.204 How much can your business borrow for post-disaster mitigation?

For mitigation measures implemented after a disaster has occurred, you can borrow the lesser of the cost of the mitigation measure, or up to 20 percent of the amount of your approved physical disaster business loan to repair or replace your damaged business real estate and other business assets.

5. Revise subpart E to read as follows:

Subpart E—Pre-Disaster Mitigation Loans

Sec.
123.400 What is the Pre-Disaster Mitigation Loan Program?
123.401 What types of mitigating measures can your business include in an application for a pre-disaster mitigation loan?
123.402 Can your business include its relocation as a mitigation measure in an application for a pre-disaster mitigation loan?
123.403 When is your business eligible to apply for a pre-disaster mitigation loan?
123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?
123.405 How much can your business borrow with a pre-disaster mitigation loan?
123.406 What is the interest rate on a pre-disaster mitigation loan?
123.407 When does your business apply for a pre-disaster mitigation loan and where does your business get the application?
123.408 How does your business apply for a pre-disaster mitigation loan?
123.409 Which pre-disaster mitigation loan requests will SBA consider for funding?
123.410 Which loan requests will SBA fund?
123.411 What if SBA determines that your business loan request meets the selection criteria of § 123.409 but SBA is unable to fund it because SBA has already allocated all program funds?
123.412 What happens if SBA declines your business' pre-disaster loan request?

Subpart E—Pre-Disaster Mitigation Loans

§ 123.400 What is the Pre-Disaster Mitigation Loan Program?

The Pre-Disaster Mitigation Loan Program allows SBA to make low interest, fixed rate loans to small businesses for the purpose of implementing mitigation measures to protect their commercial real property (building) or leasehold improvements or contents from disaster related damage. This program supports the Federal Emergency Management Agency (FEMA's) Pre-Disaster Mitigation Program. This pilot program is authorized for 5 fiscal years (October—September), from 2000 through 2004, and has only been approved for limited funding. Therefore, approved loan requests are funded on a first come, first served basis up to the limit of program funds available (see § 123.411).

§ 123.401 What types of mitigation measures can your business include in an application for a pre-disaster mitigation loan?

To be included in a pre-disaster mitigation loan application, each of

your business' mitigation measures must satisfy the following criteria:

(a) The mitigation measure, as described in the application, must serve the purpose of protecting your commercial real property (building) or leasehold improvements or contents from damage that may be caused by future disasters; and

(b) The mitigation measure must conform to the priorities and goals of the State or local government's mitigation plan for the community in which the business subject to the measure is located. To show that this factor is satisfied your business must submit to SBA, as a part of your complete application, a written statement from a State or local emergency management coordinator confirming this fact (see § 123.408). Contact your regional FEMA office for a list of your State's emergency management coordinators or visit the FEMA Web site at *http://www.fema.gov.*

§ 123.402 Can your business include its relocation as a mitigation measure in an application for a pre-disaster mitigation loan?

Yes, you may request a pre-disaster mitigation loan for the relocation of your business if:

(a) Your commercial real property (building) is located in a SFHA (Special Flood Hazard Area); and

(b) Your business relocates outside the SFHA but remains in the same participating pre-disaster mitigation community. Contact your regional FEMA office for a listing of communities participating in the Pre-Disaster Mitigation Program and SFHAs or visit the FEMA Web site at *http://www.fema.gov.*

§ 123.403 When is your business eligible to apply for a pre-disaster mitigation loan?

To be eligible to apply for a pre-disaster mitigation loan your business must meet each of the following criteria:

(a) Your business, which is the subject of the pre-disaster mitigation measure, must be located in a participating pre-disaster mitigation community. Each State, the District of Columbia, Puerto Rico, and the Virgin Islands have at least one participating pre-disaster mitigation community. Contact your regional FEMA office to find out the locations of participating pre-disaster mitigation communities or visit the FEMA Web site at *http://www.fema.gov.*;

(b) If your business is proposing a mitigation measure that protects against a flood hazard, the location of your business which is the subject of the mitigation measure must be located in a Special Flood Hazard Area (SFHA). Contact your FEMA regional office to find out the locations of SFHAs or visit the FEMA Web site at *http://www.fema.gov.*;

(c) As of the date your business submits a complete Pre-Disaster Mitigation Small Business Loan Application to SBA (see § 123.408 for what SBA's considers to be a complete application), your business, along with its affiliates, must be a small business concern as defined in part 121 of this chapter. The definition of small business concern encompasses sole proprietorships, partnerships, corporations, limited liability entities, and other legal entities recognized under State law;

(d) Your business, which is the subject of the mitigation measure, must have operated as a business in its present location for at least one year before submitting its application;

(e) Your business, along with its affiliates and owners, must not have the financial resources to fund the proposed mitigation measures without undue hardship. SBA makes this determination based on the information your business submits as a part of its application; and

(f) If your business is owning and leasing out real property, the mitigation measures must be for protection of a building leased primarily for commercial rather than residential purposes (SBA will determine this based upon a comparative square footage basis).

§ 123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?

Your business is ineligible to apply for a pre-disaster mitigation loan if your business (including its affiliates) satisfies any of the following conditions:

(a) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense, or has been indicted for a felony or a crime of moral turpitude;

(b) Your business' only interest in the business property is in the form of a security interest, mortgage, or deed of trust;

(c) The building, which is the subject of the mitigation measure, was newly constructed or substantially improved on or after February 9, 1989, and (without significant business justification) is located seaward of mean high tide or entirely in or over water;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged (see § 121.107 of this chapter) in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your business is not an agricultural enterprise, it may apply for a pre-disaster mitigation loan, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural activities;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business engages in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(l) Your business is a loan packager that earns more than one-third of its gross annual revenue from packaging SBA loans;

(m) Your business principally engages in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(n) Your business is primarily engaged in political or lobbying activities.

§ 123.405 How much can your business borrow with a pre-disaster mitigation loan?

Your business, together with its affiliates, may borrow up to $50,000 each fiscal year. This loan amount may be used to fund only those projects that were a part of your business' approved loan request. SBA will consider mitigation measures costing more than $50,000 per year if your business can identify, as a part of its Pre-Disaster Mitigation Small Business Loan Application, sources that will fund the cost above $50,000.

§ 123.406 What is the interest rate on a pre-disaster mitigation loan?

The interest rate on a pre-disaster mitigation loan will be fixed at 4 percent per annum or less. The exact

interest rate will be stated in the **Federal Register** notice announcing each filing period (see § 123.407).

§ 123.407 When does your business apply for a pre-disaster mitigation loan and where does your business get an application?

SBA will publish a notice in the **Federal Register** announcing the availability of pre-disaster mitigation loans. The notice will designate a 30-day application filing period with a specific opening date and filing deadline, as well as the locations for obtaining and filing loan applications. In addition to the **Federal Register**, SBA will coordinate with FEMA, and will issue press releases to the local media to inform potential loan applicants where to obtain loan applications. SBA will not accept any applications postmarked after the filing deadline; however, SBA may announce additional application periods each year depending on the availability of program funds.

§ 123.408 How does your business apply for a pre-disaster mitigation loan?

To apply for a pre-disaster mitigation loan your business must submit a complete Pre-Disaster Mitigation Small Business Loan Application (application) within the announced filing period. Complete applications mailed to SBA and postmarked within the announced filing period will be accepted. The complete application serves as your business' loan request. A complete application supplies all of the filing requirements specified on the application form including a written statement from the local or State coordinator confirming:

(a) The business that is the subject of the mitigation measure is located within the participating pre-disaster mitigation community; and

(b) The mitigation measure is in accordance with the specific priorities and goals of the local participating pre-disaster mitigation community in which the business is located. (The local or State coordinator's written statement does not constitute an endorsement or technical approval of the project and is not a guarantee that the project will prevent damage in future disasters).

§ 123.409 Which pre-disaster mitigation loan requests will SBA consider for funding?

(a) SBA will consider a loan request for funding if, after reviewing a complete application, SBA determines that it meets the following selection criteria:

(1) Your business satisfies the requirements of §§ 123.401, 123.402 and 123.403;

(2) None of the conditions specified in § 123.404 apply to your business, its affiliates, or principal owners;

(3) Your business has submitted a reasonable cost estimate for the proposed mitigation measure and has chosen to undertake a mitigation measure that is likely to accomplish the desired mitigation result (SBA's determination of this point is not a guaranty that the project will prevent damage in future disasters);

(4) Your business is creditworthy; and

(5) There is a reasonable assurance of loan repayment in accordance with the terms of a loan agreement.

(b) SBA will notify you in writing if your loan request does not meet the criteria in this section.

§ 123.410 Which loan requests will SBA fund?

SBA will date stamp each application (loan request) as it is received. SBA will fund loan requests which meet the selection criteria specified in § 123.409 on a first come, first served basis using this date stamp, until it has allocated all available program funds. Multiple applications received on the same day will be ranked by a computer based random selection system to determine their funding order. SBA will notify you in writing of its funding decision.

§ 123.411 What if SBA determines that your business loan request meets the selection criteria of § 123.409 but SBA is unable to fund it because SBA has already allocated all program funds?

If SBA determines that your business' loan request meets the selection criteria of § 123.409 but we are unable to fund it because we have already allocated all available program funds, your request will be given priority status, based on the original acceptance date, once more program funds become available. However, if more than 6 months pass since SBA determined to fund your request, SBA may request updated or additional financial information.

§ 123.412 What happens if SBA declines your business' pre-disaster mitigation loan request?

If SBA declines your business' loan request, SBA will notify your business in writing giving specific reasons for decline. If your business disagrees with SBA's decision, it may respond in accordance with § 123.13. If SBA reverses its decision, SBA will use the date it received your business' last request for reconsideration or appeal as the basis for determining the order of funding.

Dated: July 12, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–25143 Filed 10–4–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM230; Special Conditions No. 25–215–SC]

Special Conditions: Boeing Model 737 –100, –200, and –300 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing 737 -100, -200, & -300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a new IS&S Digital Air Data Control System that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 26, 2002. Comments must be received on or before November 6, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM230, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM230. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane

Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplane. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 17, 2002, Aircraft Systems & Manufacturing, Inc., Georgetown, TX, applied for a supplemental type certificate (STC) to modify Boeing 737–100/–200/–300 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with two wing-mounted jet engines. They are capable of seating between 100 and 150 passengers, depending upon the model and configuration. The modification incorporates the installation of a dual Air Data Control System consisting of a single air data computer and electronic altimeter for display of No. 1 altitude data, an air data display unit (ADDU) for display of No. 2 altitude data and an altitude alerter. These systems have a potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Aircraft Systems & Manufacturing, Inc. must show that the Boeing 737–100, –200, and –300 series airplanes, as modified to include the new IS&S Digital Air Data Control System, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The specific regulations included in the certification basis for the Boeing 737–100, –200, and –300 series airplanes include 14 CFR part 25, as amended by amendments 25–1 through 25–3, 25–7, 25–8, and 25–15.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing 737 –100, –200, and –300 Series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing 737 –100, –200, and –300 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 11.38, and become part of the airplane's type certification basis in accordance with 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should Aircraft Systems & Manufacturing, Inc. apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

As noted earlier, the Boeing 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. will incorporate a new IS&S Digital Air Data Control System that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. These special conditions will require that the new IS&S Digital Air Data Control System, which performs critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness

of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500kHz	50	50
500 kHz–2MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. to install new IS&S Digital Air Data Control System. Should Aircraft Systems & Manufacturing, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A16WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain design features on the Boeing Model 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc. to include the new IS&S Digital Air Data Control System. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing 737–100, –200, and –300 series airplanes modified by Aircraft Systems & Manufacturing, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on September 26, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25470 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–251–AD; Amendment 39–12903; AD 2002–20–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

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

DATES: Effective November 12, 2002.

ADDRESSES: Information pertaining to this amendment may be obtained from or examined at the Federal Aviation Administration (FAA), Transport

Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), which is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes; and AD 2000–22–02 R1, amendment 39–11948 (65 FR 69239, November 16, 2000), which is applicable to all Boeing Model 737 series airplanes; was published in the **Federal Register** on November 13, 2001 (66 FR 56783). The action proposed to require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system.

Discussion of Background

The National Transportation Safety Board (NTSB) has identified the most probable cause of two major accidents on Model 737 series airplanes as a jammed secondary slide in the main rudder power control unit (PCU) servo valve in combination with overtravel of the primary slide. While AD 97–14–04 addresses what was considered to be this most likely cause of uncommanded rudder hardovers, the FAA recognizes that other causes are still possible.

Subsequently, we determined that the existing system design architecture is unsafe due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. These failure modes remain even following accomplishment of the actions required by AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997).

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

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

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

Actions Since Issuance of Proposed Rule

Since the issuance of the notice of proposed rulemaking (NPRM), which proposed to require the supersedure of AD 97–14–04 and AD 2000–22–02 R1, we have determined that this final rule needs to supersede five additional ADs, which are listed in the table below. Our decision to supersede these ADs was based on a number of factors. First, the new rudder control system required by this AD will better address the identified unsafe condition through redundancy in the system architecture, which will increase reliability. Second, the requirements of those ADs will no longer be relevant to or necessary for the new rudder control system, since the parts required by those ADs will not be included in the design for the new rudder control system. The five additional ADs are listed in the table below and described in the following paragraphs:

List of ADs To Be Superseded

AD No.	Amendment No.	Federal Register citation
95–06–53	39–9199	60 FR 18981, April 14, 1995.
97–05–10	39–9954	62 FR 9679, March 4, 1997.
97–09–15 R1	39–10912	63 FR 64857, November 24, 1998.
98–02–01	39–10283	63 FR 1903, January 13, 1998.
99–11–05 COR	39–11175	64 FR 27905, May 24, 1999.

- AD 95–06–53, applicable to all Boeing Model 737 series airplanes, requires identification of the part and serial numbers of the main rudder PCU; and replacement of certain PCUs with serviceable parts, if necessary. That AD corrects an unsafe condition caused by improper tooling used to torque the spring retaining nut in the servo valve of the main rudder PCU. However, the PCUs identified in AD 95–06–53 will not be used in the configuration of the new rudder control system required by this AD.
- AD 97–05–10, applicable to all Boeing Model 737 series airplanes, requires removal of the main rudder PCU and replacement with a serviceable unit. That AD corrects an unsafe condition due to an unapproved Hi-Lock bolt that was installed in the lever assembly bearing of the main rudder PCU instead of the correct bolt. However, the PCUs identified in AD 97–05–10 will not be used in the configuration of the new rudder control system required by this AD.

• AD 97–09–15 R1, applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder PCU, and replacement of the valve with a valve having a different part number, if necessary. However, the engage solenoid valves specified in AD 97–09–15 R1 will not be used in the configuration of the new main rudder PCU required by this AD.

• AD 98–02–01, applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires removing the yaw damper coupler; replacing its internal rate gyroscope with a new or overhauled unit; and performing a test to verify the integrity of the yaw damper coupler, and repair if necessary. However, that configuration of the yaw damper coupler, using mechanical rate gyroscopes, is no longer approved for installation on Model 737 series airplanes. Instead, AD 97–14–03, amendment 39–10060 (62 FR 34623, June 27, 1997), requires, among other things, installation of a new yaw damper system that replaces the gyroscopes specified by AD 98–02–01. That new system is intended to prevent malfunction of the yaw damper system.

• AD 99–11–05 COR, applicable to all Boeing Model 737 series airplanes, requires repetitive displacement tests of the secondary slide in the dual concentric servo valve of the PCU for the rudder; and replacement of the valve assembly with a modified valve assembly, if necessary. However, the dual concentric servo valve of the PCU for the rudder, which was specified in AD 99–11–05 COR, will not be used in the configuration of the main rudder PCU that will be installed as a component of the new rudder control system required by this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter supports the proposed rule. Due consideration has been given to all comments received.

Request to Withdraw Proposal

One commenter considers that an adequate level of safety has been achieved by the accomplishment of AD 97–14–04 and AD 2000–22–02 R1, which are referenced in the Discussion paragraph of the proposed rule, and by the accomplishment of ADs 95–06–53, 97–05–10, 97–06–09, 97–09–14, 97–09–15, 97–14–03, 98–02–01, and 99–11–05. The commenter states that since accomplishing the modifications required by AD 97–14–03 and AD 97–14–04, no instances of uncommanded rudder movement have occurred. In addition, no discrepancies were found by the PCU manufacturer during numerous displacement tests conducted per AD 99–11–05. Further, the proposed rule identifies multiple conditions that only theoretically could occur with the existing rudder control system. After reviewing this information, we infer that the commenter is requesting withdrawal of the proposed rule.

The FAA does not concur with the commenter's request to withdraw the proposed rule. As explained in the proposed rule, the unsafe condition is due to inherent failure modes, including single-jam modes and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane. Because the identified inherent failure modes have not been eliminated by the actions required by those previously issued ADs, we have determined that the actions required by this final rule are warranted. This determination was made after considering the existence of these failure modes and the need for a unique operational procedure (per AD 2000–22–02 R1). No change to the final rule is necessary in this regard.

Disagreement With Identified Unsafe Condition

One commenter, the manufacturer, does not agree that the unsafe condition identified in the proposed AD exists in the current Model 737 rudder control system for the following reasons:

• The current rudder control system is safe and has been shown to meet all current regulations using accepted industry analysis and validation practices.

• Service experience accumulated over 116 million flight hours demonstrates that the system is safe; the airplane has one of the lowest accident rates of airplanes in its class.

• All issues identified as potential safety issues have been addressed by service bulletins mandated by the following airworthiness directives issued by the FAA: AD 97–14–03; AD 97–14–04; AD 97–26–01, amendment 39–10244 (62 FR 65597, December 15, 1997); and AD 98–13–12, amendment 39–10600 (63 FR 33246, June 18, 1998).

• The 737 Flight Controls ETEB report did not identify any new significant failure modes or unsafe conditions that invalidate previous Model 737 certification documentation. All failure modes in the ETEB report had been previously identified and analyzed by the manufacturer. The existing rudder system is considered safe and meets federal regulations.

While the manufacturer does not agree that the unsafe condition exists, it states that it is committed to a redesign of the Model 737 rudder control system to further enhance an already safe system. The manufacturer also states that the new design will eliminate certain potential latent failures in the system, even though evaluation in accordance with federal regulations has shown such latencies to be acceptable. The elimination of such failures will enable the system to be functionally equivalent to a three-actuator system. The new system also will eliminate the need for the existing uncommanded rudder non-normal operational procedure unique to Model 737 series airplanes.

While the ADs identified by the manufacturer were issued to address previously identified unsafe conditions, we have determined that the inherent failure modes identified in this AD have not been eliminated by the actions required by those ADs. Therefore, we do not agree with the manufacturer's conclusion that the existing design of the rudder control system is safe. As described in the proposed AD, the unsafe condition is due to inherent failure modes, including single-jam modes, and certain latent failures or jams, which, when combined with a second failure or jam, could cause an uncommanded rudder hardover event and consequent loss of control of the airplane.

Likewise, AD 2000–22–02 R1 provides instructions to the flightcrew for addressing certain rudder system failures, but those instructions will not be effective in preventing an accident if the rudder control failure occurs during takeoff or landing.

After considering all of this information, we have determined that it is necessary to issue this AD to eliminate the unsafe condition by mandating the installation of a newly designed rudder control system. The new system will incorporate design features that will increase system redundancy, and will add an active fault monitoring system to detect and annunciate to the flightcrew single jams in the rudder control system. If a single failure or jam occurs in the linkage aft of the torque tube, the new system will allow the flightcrew to control the airplane using normal piloting skills, and without using operational procedures that are unique to this airplane model. In light of this, we consider that the actions specified in

this final rule are warranted. No change to the final rule is necessary in this regard.

Request for Information/Concerns About New Rudder Control System

One commenter, the NTSB, requested more information on the system safety assessment (SSA) being conducted in support of the design changes for the proposed new rudder control system. To help evaluate the new design, the commenter would like to review the analyses being conducted for each design, the reliability benefits, and other rudder actuation system designs that were submitted.

The commenter also stated the following concerns about the new system:

- It does not provide full independence for the main PCU, and ''it would appear that true redundancy would require two fully independent PCUs.''
- The automatic activation system for the standby PCU may increase the number of possible failure modes compared to the installation of a third full-time independent PCU.
- Without the SSA information, the commenter states that it is unable to determine if the revisions to the rudder actuation system of the Boeing Model 737 series airplanes will sufficiently address safety concerns.

We cannot provide the requested SSA information or other requested design information because it is proprietary to The Boeing Company. However, we have sent the commenter's request to Boeing. Boeing has informed us that it has briefed the NTSB on the Rudder System Enhancement Program on January 16, 2001, and on March 18, 2002. To the extent that the commenter expresses an interest in certification documentation, Boeing will submit the SSA results to us for our approval as part of the certification of the new design.

The commenter also expressed a concern that true redundancy would require two fully independent PCUs. During our reviews of the new rudder control system, we have found that the new main rudder PCU design is equivalent to two independent PCUs. The main rudder PCU is an assembly with two PCUs arranged in tandem. The new main rudder PCU will have two independent servo valves in lieu of the existing common dual concentric servo valve. Two separate input linkages will control the position of these valves on the main rudder PCU. The pilot can override each of these input linkages and also override the linkage for the standby PCU. The function of the override capability is to enable the pilot to control the airplane in the event of a jam in any one of the three input linkages or associated servo valves in the rudder control system.

Finally, the commenter expressed concerns that the automatic activation system for the standby PCU may increase the number of failure modes, compared to the installation of a third full-time independent PCU. In addressing this concern, we note that introduction of a third full-time PCU for a single flight control surface would introduce latent failure modes. With three active PCUs, a single PCU failure (due to a valve jam or linkage failure) can remain latent while the other two PCUs control the rudder surface position. Typically, rudder control systems with three active PCUs require frequent periodic maintenance to detect a single failure, or require a fault-monitoring and annunciation system.

The introduction of any fault-monitoring system will increase the number of failure modes due to increased system complexity. Although the fault-monitoring system for the new rudder control system slightly increases the number of failure modes, these failure modes would not have any adverse effect on the operation of the rudder control system. However, this new system will provide significant benefits in the capability to detect certain failures, provide crew annunciation, and activate the standby rudder PCU. When the standby rudder PCU is activated along with the main rudder PCU, there will be effectively three PCUs controlling the rudder surface position.

In light of this information and based on our certification activities, the new rudder control system will adequately address the identified unsafe condition. No change to the final rule is necessary in this regard.

Suggestion Regarding the Identified Unsafe Condition

One commenter suggested that electromagnetic interference may have contributed to reported events of uncommanded rudder movement on Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. However, the commenter concluded that, if this is true, those airplanes have already been fixed by previously mandated changes to the yaw damper system.

We do not concur with the commenter's suggestion or conclusion. The only electrical components in the rudder control system are in the yaw damper system. The existing rudder yaw damper system has mechanical stops that limit rudder movement to the yaw damper authority. In a normally functioning system, it is not possible for electrical interference to move the rudder beyond the mechanical stops. No change to the final rule is necessary in this regard.

Requests To Revise the Compliance Time

Several commenters request revising the proposed compliance time of 5 years, and two commenters suggest a new compliance time of September 2008. In addition, several commenters recommend basing the compliance time on the completion of tests for the new main rudder PCU, receipt of service bulletins, operators' maintenance schedules, and parts availability. Additional recommendations and FAA responses are described as follows:

- One commenter states that wiring kits should be available in the second quarter of 2002, but actual hardware won't be available until the year 2003. In addition, because of the number of affected airplanes (about 150) in the commenter's fleet, the proposed 5-year compliance time will not be sufficient to accomplish the required actions if receipt of the service bulletins and parts are delayed for 2 years.
- One commenter suggests extending the compliance time to 10 years, and states that the extensive modifications required by the proposed rule are best suited for accomplishment at a D-check.
- One commenter is concerned about parts availability and a possible schedule slide. The commenter states that the manufacturer projects a maximum production capacity of 100 PCUs per month, with about 75 of those units available for retrofit each month after airplane production line requirements are met. In addition, if PCU certification and production proceed on schedule, a maximum of 3,300 airplanes could be retrofitted within 44 months, which would be insufficient to meet 27 percent of potential worldwide demands. The commenter is concerned that, if PCU certification or the production schedule should slide, the schedule for providing sufficient parts would be adversely affected.
- One commenter, the manufacturer, justifies its request for a September 2008 compliance time by noting the benefits of a slower introduction to the retrofit program. The manufacturer states that the FAA made assumptions in the proposed AD based on estimates for retrofitting U.S.-registered airplanes (about 2,000). However, the manufacturer notes that it must plan for retrofitting the worldwide fleet (about

4,500 airplanes). In addition, because the proposed changes to the rudder control system will require modifications throughout the airplane, the manufacturer recommends the September 2008 compliance time to allow for a phased approach for the retrofit program, thereby providing the time necessary to correct any issues identified during the first retrofits.

We partially concur with the commenters' requests to revise the compliance time. We have considered the commenters' suggestions and concerns, and have made the following determinations. We concur with the requests to revise the compliance time to the year 2008, but do not concur with the request to extend the compliance time to 10 years. We agree that the 5-year compliance time required by the proposed rule may not allow operators sufficient time to accomplish the required design modifications. We also agree that the new compliance time should take into consideration when the service bulletins will be issued and when the required parts will be made available to the operators.

In addressing the concerns about delays in the issuance of service bulletins, insufficient parts, and sliding schedules, the manufacturer has established a firm schedule and has assured us that all service information and parts will be provided within the required 6-year compliance time to support the new rudder control system. The manufacturer also has established backup plans to further ensure that parts will be available to meet schedule deadlines. To date, the manufacturer has informed us that the necessary service information is being developed and will be issued according to schedule, and that all necessary parts are being manufactured and will be available per the schedule. Further, we will closely monitor the manufacturer's schedule to ensure that all service information and parts are provided to the operators on time.

In making our determination to extend the compliance time from 5 to 6 years, we also have taken into consideration the service record of Model 737 series airplanes since the accomplishment of the modifications required by AD 97–14–03 and AD 97–14–04. In light of all of this information, we have determined that a compliance time of 6 years will provide sufficient time for affected operators to install the new rudder control system without adversely affecting safety. Paragraph (a) of the final rule is revised accordingly.

Requests To Delay Issuance of Proposed Rule

Although several commenters support the intent of the proposed AD, the commenters request delaying issuance of the proposed rule. The specific comments are described as follows:

- The Air Transport Association (ATA) of America, on behalf of some of its members, recommends delaying issuance of the proposed rule until after the new main rudder PCU is tested and certified, and after the service information is issued by the manufacturer and approved by the FAA. Although service bulletins for the wiring installations for certain airplanes were issued in February 2002, issuance of additional service bulletins are not expected until the third quarter of 2002. In addition, service information for PCU procedures is not expected until July 2003. ATA is concerned about the risks associated with mandating the proposed actions before completing test and evaluation procedures for the new rudder control system, and about the limited number of retrofit kits that will be available each month.
- One commenter strongly recommends waiting to issue the proposed rule until the relevant Boeing service bulletins and required parts are available. As noted earlier in the ''Requests to Revise the Compliance Time'' paragraph of this AD, that same commenter stated that, although the wiring kits would be available in the second quarter of 2002, actual hardware would not be available until the year 2003.
- Two commenters consider that the proposed rule should be issued after the new rudder control system has been tested and approved. Issuing the proposed rule before approval of the system does not allow operators the opportunity to evaluate and comment on the system. Requiring installation of an unknown system places an undue burden on operators, since procedures for the corrective action are not yet defined.

We do not agree that issuance of this AD should be delayed. The manufacturer has assured us that the compliance time specified by this AD will allow sufficient time to design, test, and evaluate the new rudder control system. As described earlier, we are monitoring the manufacturer's schedule for issuing the required service information and providing parts, and we will strive to ensure that the parts and information will be provided to the operators so that they can meet the requirements of this AD.

We infer from the commenters' requests to delay issuance of the final rule that the commenters are seeking more time to comply with the rule. In this regard, we partially concur, and, as described earlier in this AD, have extended the 5-year compliance time specified in the proposed AD to 6 years. The manufacturer has assured us that, in addition to the wiring service information issued in February 2002, it will provide all additional service information (including PCU procedures) and parts necessary to meet the requirements of this AD. In addition, the new rudder control system, including all necessary components for the system, will be thoroughly tested and evaluated prior to issuance of the service information. No change is made to the final rule in this regard. As described earlier, paragraph (a) of the final rule specifies the new compliance time of 6 years after the effective date of this AD.

Cost Concerns

One commenter states that the proposed costs are substantial ($184,000 per airplane, or $364 million for U.S. operators).

We recognize that the costs for the new rudder control system are substantial. However, in determining the costs associated with the new rudder control system, we based our cost estimate on the manufacturer's estimate of 700 work hours per airplane for the installation of the new rudder control system, and our estimate of approximately $140,000 per airplane for parts. For reasons specified in the proposed AD, we have determined that an unsafe condition exists, and we consider that accomplishment of the requirements of this AD is necessary to address that identified unsafe condition. No change is made to the final rule in this regard.

Request To Supersede Certain ADs

One commenter considers that any new proposed rule should supersede the ADs listed in the following table and described below:

COMMENTER'S SUGGESTED LIST OF ADS TO BE SUPERSEDED

AD No.	Amendment No.	Federal Register citation
95–06–53	39–9199	60 FR 18981, April 14, 1995.
97–05–10	39–9954	62 FR 9679, March 4, 1997.

COMMENTER'S SUGGESTED LIST OF ADS TO BE SUPERSEDED—Continued

AD No.	Amendment No.	Federal Register citation
97–06–09	39–9966	62 FR 12739, March 18, 1997.
97–09–14*	39–10010	62 FR 24008, May 2, 1997.
97–09–15*	39–10011	62 FR 24325, May 5, 1997.
97–14–03	39–10060	62 FR 34623, June 27, 1997.
97–14–04	39–10061	62 FR 35068, June 30, 1997.
98–02–01	39–10283	63 FR 1903, January 13, 1998.
99–11–05*	39–11175	64 FR 27905, May 24, 1999.
2000–22–02 R1	39–11948	65 FR 69239, November 16, 2000.

• Asterisks in the preceding table indicate the following changes since the issuance of those ADs:

• AD 97–09–14 was superseded by AD 2000–02–18, amendment 39–11536 (65 FR 5238, February 3, 2000).

• AD 97–09–15 was revised by AD 97–09–15 R1, amendment 39–10912 (63 FR 64857, November 24, 1998).

• AD 99–11–05 was corrected by AD 99–11–05 COR, amendment 39–11175 (64 FR 27905, May 24, 1999).

The commenter adds that incidents of uncommanded rudder movement were reported on airplanes prior to the accomplishment of AD 97–14–03 and AD 97–14–04; however, no incidents have occurred since the accomplishment of those ADs. In addition, the manufacturer of the main rudder PCU has accomplished 361 displacement tests per AD 99–11–05, and no discrepancies occurred during those tests.

We partially concur with the commenter's request. We have determined that the final rule should supersede the two ADs cited in the NPRM (AD 97–14–04 and AD 2000–22–02 R1) and only five of the ADs listed in the table above (AD 95–06–53, 97–05–10, 97–09–15 R1, 98–02–01, and 99–11–05 COR). (Those five ADs were described in detail in this AD in ''Actions Since Issuance of Proposed Rule.'')

However, we do not agree that this AD should supersede AD 97–06–09, AD 97–14–03, or AD 2000–02–18 (which supersedes 97–09–14) because the requirements of those ADs are necessary to correct unsafe conditions that are not addressed by the requirements of this AD. In addition, the components and system specified in AD 97–14–03 are compatible with the new rudder control system and are necessary for the operation of that system. The requirements of those three ADs are described as follows:

• AD 97–06–09, applicable to certain Boeing Model 737–300, –400, and –500 series airplanes, requires replacing certain aileron/rudder trim control modules with an improved module that contains an improved rudder trim switch that precludes the problems of sticking associated with the existing switch. That AD is intended to prevent such sticking.

• AD 97–14–03, applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires installation of a newly designed rudder-limiting device and yaw damper system. As described earlier in this AD in the ''Actions Since Issuance of Proposed Rule'' paragraph, AD 97–14–03 supersedes AD 98–02–01 (which requires mechanical rate gyroscopes that are no longer approved for installation on Model 737 series airplanes). The new yaw damper system required by AD 97–14–03 is intended to prevent excessive rudder authority and consequent reduced controllability of the airplane, and malfunctions of the yaw damper system.

• AD 2000–02–18 (which supersedes AD 97–09–14), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, requires an inspection of reworked aileron/elevator PCUs and rudder PCUs to determine if reworked PCU manifold cylinder bores containing chrome plating are installed, and replacement of the cylinder bores with cylinder bores that have been reworked using the oversize method or the steel sleeve method if necessary. That AD is intended to prevent a reduced rate of movement of the elevator, aileron, or rudder due to contamination of hydraulic fluid from chrome plating chips. Such reduced rate of movement, if not corrected, could result in reduced controllability of the airplane.

We have revised the final rule to supersede the five ADs listed and described in a previous paragraph, ''Actions Since Issuance of Proposed Rule.'' As discussed previously in this AD, the final rule also supersedes two other ADs.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We also have 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 4,500 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2,000 airplanes of U.S. registry will be affected by this AD.

The new installation action that is required by this new AD will take approximately 700 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $140,000 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $364,000,000 (over the proposed 6-year compliance time), or $182,000 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 39–9199 (60 FR 18981, April 14, 1995); amendment 39–9954 (62 FR 9679, March 4, 1997); amendment 39–10061 (62 FR 35068, June 30, 1997); amendment 39–10283 (63 FR 1903, January 13, 1998); amendment 39–10912 (63 FR 64857, November 24, 1998); amendment 39–11175 (64 FR 27905, May 24, 1999); and amendment 39–11948 (65 FR 69239, November 16, 2000); and by adding a new airworthiness directive (AD), amendment 39–12903, to read as follows:

2002–20–07 Boeing: Amendment 39–12903. Docket 2001–NM–251–AD. Supersedes AD 95–06–53, Amendment 39–9199; AD 97–05–10, Amendment 39–9954; AD 97–09–15 R1, Amendment 39–10912; AD 97–14–04, Amendment 39–10061; AD 98–02–01, Amendment 39–10283; AD 99–11–05 COR, Amendment 39–11175; and AD 2000–22–02 R1, Amendment 39–11948.

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

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

Compliance: Required as indicated, unless accomplished previously.

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

Installation

(a) Within 6 years after the effective date of this AD, do the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

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

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

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously in accordance with the ADs listed in the following table, are not considered to be approved as alternative methods of compliance with this AD:

TABLE—LIST OF ADS

AD No.	Amendment No.
95–06–53	39–9199
97–05–10	39–9954
97–09–15 R1	39–10912
97–14–04	39–10061
98–02–01	39–10283
99–11–05 COR	39–11175
2000–22–02 R1	39–11948

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

Special Flight Permits

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

Effective Date

(d) This amendment becomes effective on November 12, 2002.

Issued in Renton, Washington, on September 27, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25346 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–248–AD; Amendment 39–12904; AD 2002–19–51 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–19–51 R1 that was sent previously to all known U.S. owners and operators of all Boeing Model 737 series airplanes by individual notices. This AD revises existing AD 2002–19–51 that currently requires, for certain airplanes, an inspection to determine the serial number of certain flight control modules (FCM), having P/N 65–44891–7, and corrective actions if necessary. That AD was prompted by reports of failed FCMs, which resulted in sluggish response of the aileron, elevator, and rudder surfaces. This AD revises the existing AD to provide operators with additional options for compliance, to specify the serial numbers of the affected compensator, and to make other editorial changes. The actions specified by this AD are intended to prevent operation with one failed FCM, which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane.

DATES: Effective October 15, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–19–51 R1, issued on September 18, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before December 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–248–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2002, the FAA issued airworthiness directive (AD) 2002–19–51, applicable to all Boeing Model 737 series airplanes, to require, for certain airplanes, an inspection to determine whether flight control modules (FCM) having part number (P/N) 65–44891–7 with serial number (S/N) 8726 or greater (hereafter referred to as ''suspect FCMs'') are installed, and corrective actions if necessary. The corrective actions include replacing the suspect FCM(s) with a serviceable FCM(s) having P/N 65–44891–7 with a S/N less than 8726, and revising the FAA-approved Airplane Flight Manual (AFM) to include procedures for certain airplanes to identify failures of suspect FCMs before dispatch and to provide the flightcrew with operating procedures in the event of failure of an FCM in flight. The AD also requires certain operators to submit inspection findings to the FAA. That action was prompted by reports of failed FCMs, which resulted in sluggish response of the aileron, elevator, and rudder surfaces. The actions required by that AD are intended to prevent operation with one failed FCM, which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane.

Clarification of Affected Airplanes

Because of reports of some operators misinterpreting the applicability of AD 2002–19–51, we find that clarification is necessary. Operators should note that this AD affects all Boeing Model 737 series airplanes. Operators of Model 737–600, –700, –700C, –800, and –900 series airplanes, having line numbers 1136 through 1230 inclusive, are subject to all requirements of this AD. However, operators of all Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; and Model 737–600, –700, –700C, –800, and –900 series airplanes, having line numbers other than 1136 through 1230 inclusive; are only required to adhere to paragraphs (j) and (k) of this AD (*i.e.*, parts installation paragraphs) to ensure that spare replacement FCMs and compensators identified in those paragraphs are not installed on any Model 737 series airplane in the future. No change to this AD is necessary in this regard.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2002–19–51, the FAA has approved an alternative method of compliance (AMOC) for the replacement required by paragraphs (d)(1), (d)(2), and (h) of that AD. The AMOC allows FCMs having P/Ns other than 65–44891–7 that are approved for installation on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes to be installed during the replacements required by those paragraphs. In addition, we have determined that a suspect FCM can continue to be used once the compensator has been replaced with an airworthy compensator. Therefore, we have revised those paragraphs and paragraph (j) of this AD accordingly.

We also have determined that replacement of all suspect FCMs with airworthy FCMs terminates the requirements of paragraphs (e) through (g) of this AD. Therefore, we have revised paragraphs (c) and (d)(1) of this AD accordingly.

We also have revised paragraph (h) of this AD to state explicitly that suspect FCMs that fail during operation of the airplane must be replaced before further flight.

AD 2002–19–51 contains a typographical error in paragraph (k). That paragraph refers to ''compensator having P/N 10–605603–3,'' which does not exist. The correct P/N of that compensator is ''P/N 10–60560–3.'' In addition, the airplane manufacturer has provided us with the specific S/Ns (*i.e.*, 20478A or greater) of the suspect compensator, P/N 10–60560–3. Therefore, we have revised paragraph (k) of this AD accordingly to prohibit installation of only these S/Ns. We also clarified that unairworthy compensators cannot be installed on any FCM.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2002–19–51 R1 to prevent operation with one failed FCM, which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane. This AD revises AD 2002–19–51 to continue to require, for certain airplanes, an inspection to determine the S/N of the FCMs having P/N 65–44891–7 and corrective actions if necessary. This AD also continues to require certain operators to submit inspection findings to Boeing. This AD revises the existing AD to provide operators with additional options for compliance, to specify the serial numbers of the affected compensator, and to make other editorial changes.

Interim Action

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

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on September 18, 2002, to all known U.S. owners and operators of all Boeing Model 737 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to §39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–248–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–19–51 R1 Boeing: Amendment 39–12904. Docket 2002–NM–248–AD. Revises AD 2002–19–51.

Applicability: All Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, and –900 series airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent operation with one failed flight control module (FCM), which could result in reduced controllability of the airplane, or with two failed FCMs, which could result in loss of control of the airplane, accomplish the following:

Inspection

(a) For Model 737–600, –700, –700C, –800, and –900 series airplanes, having line numbers 1136 through 1230 inclusive: Before further flight after the effective date of this AD, do an inspection to determine the serial number (S/N) of both FCMs having part number (P/N) 65–44891–7.

Neither FCM Has S/N 8726 or Greater

(b) If neither FCM has S/N 8726 or greater (hereafter referred to as a ''suspect FCM''), no further action is required by this AD, except for the requirements specified in paragraphs (j) and (k) of this AD.

FCM(s) Has S/N 8726 or Greater

(c) If one FCM is a suspect FCM, the airplane may continue to be operated, but within 24 hours after accomplishing the inspection required by paragraph (a) of this AD, do the actions specified in paragraphs (e) through (g) of this AD. Replacement of the suspect FCM with an FCM identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD terminates the requirements of paragraphs (e) through (g) of this AD.

(1) A serviceable FCM having P/N 65–44891–7 with a S/N less than 8726.

(2) A serviceable FCM having a P/N other than 65–44891–7 that is approved for installation on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes.

(3) A suspect FCM on which the compensator has been replaced with a serviceable compensator, approved for installation on FCM, P/N 65–44891–7, other than a compensator having P/N 10–60560–3 with S/N 20478A or greater.

(d) If both FCMs are suspect FCMs, do the actions specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) Before further flight, replace one of the FCMs with an FCM identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD. Thereafter, the airplane may continue to be operated, but within 24 hours after accomplishing the inspection required by paragraph (a) of this AD, do the actions specified in paragraphs (e) through (g) of this AD. Replacement of both suspect FCMs with FCMs identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD terminates the requirements of paragraphs (e) through (g) of this AD.

(2) Before further flight, replace both FCMs with FCMs identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD. Thereafter, no further action is required by this AD, except for the requirements specified in paragraphs (j) and (k) of this AD.

(e) If required by paragraph (c), (d)(1), or (m) of this AD: Revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following (this may be accomplished by inserting this AD into the AFM):

''Pre-Flight Flight Control Module (FCM) Checks

These checks can be performed any time after the Electric Hydraulic Pump A and B Switches are positioned ON and prior to Engine Start. Ensure ground personnel are clear of all control surfaces. If Minimum Equipment List (MEL) dispatch with one or both autopilot channels inoperative is planned, it is acceptable not to perform the check on the inoperative channel(s).

Flight Control Switch Check

1. Ensure FLT CONTROL A & B switches are ON

2. FLT CONTROL A Switch * * * OFF
   —Verify Flight Controls LOW PRESSURE Light illuminates within 2 seconds.
3. FLT CONTROL A Switch * * * ON
   —Verify Flight Control LOW PRESSURE Light extinguishes.
4. FLT CONTROL B Switch * * * OFF
   —Verify Flight Controls LOW PRESSURE Light illuminates within 2 seconds.
5. FLT CONTROL B Switch * * * ON
   —Verify Flight Controls LOW PRESSURE Light extinguishes.

Note: Failure of the Flight Control LOW PRESSURE Light to illuminate within 2 seconds may indicate a failure of the related flight control module.

Autopilot Check

1. Ensure IRUs are in the NAV mode
2. A/P ENGAGE Switch * * * CMD A
   —Wait 10 seconds, and verify light remains ON
3. Disengage A autopilot
4. A/P ENGAGE Switch * * * CMD B
   —Wait 10 seconds, and verify light remains ON
5. Disengage B autopilot
6. To fail this test, one autopilot will fail to engage and the other will fail to stay engaged.

Note: Failure of the autopilots to engage as described in Step 6. may indicate a failure of a flight control module.

Warning: If either Pre-Flight FCM Checks fails, do not takeoff until the failed module has been replaced.''

(f) If required by paragraph (c), (d)(1), or (m) of this AD: Revise the Limitations Section of the FAA-approved AFM to include the following statement (this may be accomplished by inserting this AD into the AFM): ''If a flight control module (FCM), having P/N 65–44891–7 with S/N 8726 or greater is installed, the 'Pre-Flight Flight Control Module (FCM) Checks' specified in the Normal Procedures of this AFM must be accomplished before each flight. If either Pre-Flight FCM Checks fails, do not takeoff until the failed module has been replaced.''

(g) If required by paragraph (c), (d)(1), or (m) of this AD: Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following (this may be accomplished by inserting this AD into the AFM):

Flight Control Module (FCM) Failure

Note: If the module fails in flight, neither A nor B autopilot will engage. Other indications include possible increase in flight control forces (similar to manual reversion) and possible yaw damper disengagement.

Failure of a second module in flight could result in serious degradation of airplane controllability, including high control forces.

If a failure is suspected in flight:

- Plan to land at the nearest suitable airport
- Crosswind capability may be reduced
- Do not turn off any flight control switches
- Plan a flaps 15 landing
- Use VREF 15 + 5 or VREF ICE + 5''

Note 2: The Limitations, Non-Normal Procedures, and Normal Procedures specified by paragraphs (e) through (g) of this AD are required to be implemented only for airplanes on which suspect FCMs have been installed. However, individual pilots may operate other airplanes on which those suspect FCMs have not been installed, and that are not subject to those limitations and procedures. Therefore, to avoid any confusion or misunderstanding, it is important that airlines have communication mechanisms in place to ensure that pilots are aware, for each flight, whether the Limitations, Non-Normal Procedures, and Normal Procedures apply.

Failures Detected During ''Flight Control Check''

(h) If any failure is detected during any ''Pre-Flight Flight Control Module (FCM) Checks'' specified in paragraph (e) of this AD, or during operation of the airplane, before further flight, replace the affected FCM with an FCM identified in paragraph (c)(1), (c)(2), or (c)(3) of this AD.

Reporting Requirement

(i) Submit a report of inspection findings to the Boeing Renton Airline Support Manager, Craig Blankenstein, 2925 South 112th Street, Seattle, Washington 98168; fax (206) 544–9698; at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. (The report must include the airplane line number and FCM P/N and S/N.) Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished before receipt of AD 2002–19–51: Submit the report within 10 days after the effective date of this AD.

Part Installation

(j) For all airplanes: After the effective date of this AD, no person shall install an FCM having P/N 65–44891–7 with a S/N 8726 or greater, on any airplane, unless the compensator has been replaced with a compensator, approved for installation on FCM, P/N 65–44891–7, other than a compensator having P/N 10–60560–3 with S/N 20478A or greater.

(k) After the effective date of this AD, no person shall install a compensator having P/N 10–60560–3 with S/N 20478A or greater, on any FCM.

Alternative Methods of Compliance

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

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

Special Flight Permits

(m) 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, provided that the airplane is operated per the requirements of paragraphs (e) through (g) of this AD, and that there are no known FCM failures upon dispatch.

Effective Date

(n) This amendment becomes effective on October 15, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–19–51 R1, issued on September 18, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on October 1, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–25458 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 4, 9, 11, 16, 17, 18, 19, 21, 31, 36, 37, 38, 39, 40, 41, 140, 145, 150, 170, 171 and 190

Changes in Divisional Structure and Delegations of Authority

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules to reflect the reassignment of responsibilities, including delegations of authority, resulting from its recent reorganization of Commission staff. Effective July 1, 2002, the Commission reassigned the responsibilities of the former Division of Trading and Markets and Division of Economic Analysis to the newly established Division of Clearing and Intermediary Oversight, Division of Market Oversight and Office of the Chief Economist. The reorganized divisions will more effectively implement the provisions of the Commodity Futures Modernization Act of 2000 (CFMA).

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Division of Market Oversight, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone 202–418–5260. E-mail: [*parchitzel@cftc.gov*].

SUPPLEMENTARY INFORMATION: On December 21, 2000, the President signed into law the Commodity Futures Modernization Act of 2000 (''CFMA'') which extensively revises the Commodity Exchange Act (Act)[1] In order to more effectively implement its provisions, the Commission has reorganized its operating divisions. Under the reorganized structure, the Division of Trading and Markets and the Division of Economic Analysis (the former divisions) has been reconfigured into two new divisions, the Division of Clearing and Intermediary Oversight and the Division of Market Oversight (the new divisions), and the Office of the Chief Economist.

The Commission is amending several of its rules in Chapter I of Title 17 of the Code of Federal Regulations to reflect this reorganized structure. Accordingly, as indicated in the chart below, the Commission is deleting from its rules references to the former divisions and replacing them with references to the new divisions. As amended, the rules will reflect the new assignments of responsibilities, including delegated authorities, to the two new divisions.

The Commission is also amending rule 140.99, which governs requests for exemptive, no-action and interpretative letters. Before its amendment, rule 140.99 required all requests to be filed with the Division of Trading and Markets, and thereafter routed to the appropriate office or division. The Commission has determined that it will be more efficient to require the requester to file the request directly with the division with operating responsibility for administering the provision of the Act or of the Commission's regulations from which relief is sought. Accordingly, the Commission is amending rule 140.99 to require that requests relating to certain specific subject matter areas (as enumerated in the amended rule) be filed with the division with operating responsibility for that subject matter area.

The Commission is deleting rule 140.100 which it adopted on July 9, 2002, 67 FR 45299. That rule provided that all delegations of authority from the Commission to the Directors of the former divisions, and their respective designees, as set forth in Chapter I of Title 17 of the Code of Federal Regulations, were delegated jointly to the respective Directors of the new divisions, and their respective designees. Now that the Commission has amended several of its rules to reflect the new agency structure, rule 140.100 is no longer necessary. Finally, the Commission is removing and reserving rules 1.41a, 1.41c and 1.42, which have been superseded by the CFMA[2]

Related Matters

Administrative Procedure Act

The Commission has determined that restructuring of responsibilities, including delegations of authority, relates solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act that generally require notice of proposed rulemaking and that provide other opportunities for public participation are not applicable.[3] The Commission further finds that, because the rules have no adverse effect upon a member of the public, there is good cause to make them effective immediately upon publication in the **Federal Register.**

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular section 2(a)(11) of the Act, 7 U.S.C. 2(a)(11), as amended, the Commission hereby amends Parts 1, 3, 4, 9, 11, 16, 17, 18, 19, 21, 31, 36, 37, 38, 39, 40, 41, 140, 145, 150, 170, 171, and 190 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

17 CFR Parts 1, 3, 4, 9, 11, 16, 17, 18, 19, 21, 31, 36, 37, 38, 39, 40, 41, 140, 145, 150, 170, 171 and 190

1. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
1.12(g)(3)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
1.12(h)	Division of Trading Markets	Division of Clearing and Intermediary Oversight.
1.62(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
1.62(b)	Attn: Chief Counsel,	Attn:
1.65(d)	Chief Counsel, Division of Trading and Markets	Deputy Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight.
1.66(b)(5)(ii)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.12(g)(2)(i)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.12(g)(2)(ii)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.22	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.33(e)	Division of Trading and Markets, Registration Unit	Division of Clearing and Intermediary Oversight.
3.50(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.50(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.55(e)(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.56(e)(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.63	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
3.70(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.

[1] The Commodity Exchange Act may be found at 7 U.S.C. 1 *et seq.* (2000), as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] Section 15 of the Commodity Exchange Act, as amended by the CFMA, provides that before promulgating a regulation under this Act or issuing an order, the Commission shall consider the costs and benefits of the action of the Commission. These rules govern internal agency organization, procedure, and practice, and therefore the Commission finds that none of the considerations enumerated in section 15(a)(2) of the Act, as amended, are applicable to these rules.

[3] 5 U.S.C. 553 (1994).

Section	Remove	Add
3.70(a)	Chief Counsel	Deputy Director, Compliance and Registration Section.
Pt. 3 App. A,	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
4.2(a)	Managed Funds Branch, Division of Trading and Markets.	Division of Clearing and Intermediary Oversight.
9.2(h)	Division of Trading and Markets	Division of Market Oversight and/or the Division of Clearing and Intermediary Oversight.
9.11(c)	Contract Markets Section, Division of Trading and Markets.	Division of Market Oversight.
9.12(b)	Division of Trading and Markets	Division of Market Oversight.
9.26, first sentence	Within twenty days after the receipt by the Division of Trading and Markets of the answering brief, the Division of Trading and Markets * * *..	Within twenty days after receipt of the answering brief, the Division of Market Oversight and/or the Division of Clearing and Intermediary Oversight * * *
9.26, last sentence	No employee of the Division of Trading and Markets	No employee of the Division(s) filing the notice.
9.31(a)	Division of Trading and Markets	Division of Market Oversight or the Division of Clearing and Intermediary Oversight.
11.2(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
11.2(a)	Division of Economic Analysis	Division of Market Oversight.
16.07	Division of Economic Analysis	Division of Market Oversight.
17.03	Division of Economic Analysis	Division of Market Oversight.
18.03	Division of Economic Analysis	Division of Market Oversight.
19.00(a)(3)	Division of Economic Analysis	Division of Market Oversight.
21.02a(c)	Division of Economic Analysis	Division of Market Oversight.
31.6(f)(1)	Division of Economic Analysis	Division of Market Oversight.
31.6(f)(2)	Division of Economic Analysis	Division of Market Oversight.
31.13(n)(1)	Division of Trading and Markets	Division of Cleaering and Intermediary Oversight.
31.14(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
31.14(a)	Division of Economic Analysis	Division of Market Oversight.
36.3(b)(2)(ii)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
36.3(b)(2)(ii)	Economic Analysis	The Division of Market Oversight.
37.5(f)(1)	Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors.	Division of Market Oversight or such other employee or employees as the Director.
37.5(f)(2)	Directors	Director.
37.8(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
37.8(d)	Division of Economic Analysis	Division of Market Oversight.
38.3(e)(1)	Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors.	Division of Market Oversight or such other employee or employees as the Director.
38.3(e)(2)	Directors	Director.
38 App B, Core Principle 11, (a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
39.3(e)(1)–(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
40.7(a)(1)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
40.7(a)(1)	Economic Analysis	The Division of Market Oversight.
40.7(a)(2)	Director of the Division of Trading and Markets, or the delegatees of the Director.	Directors of Division of Market Oversight and Division of Clearing and Intermediary Oversight or the delegatees of the Directors.
40.7(b), introductory text	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
40.7(b), introductory text	Economic Analysis	The Division of Market Oversight.
41.33(g)	Division of Trading and Markets and the Director of the Division of Economic Analysis, jointly.	Division of Market Oversight.
41.33(g)(1)	Division of Trading and Markets or the Director of the Division of Economic Analysis.	Division of Market Oversight.
41.33(g)(2)	Division of Trading and Markets and the Director of the Division of Economic Analysis.	Division of Market Oversight.
41.3(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.72(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.72(a)	Division of Economic Analysis	Division of Market Oversight.
140.73(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.73(a)	Division of Economic Analysis	Division of Market Oversight.
140.73(b)	Division of Economic Analysis	Division of Market Oversight.
140.74(a)	Division of Economic Analysis	Division of Market Oversight.
140.74(b)	Division of Economic Analysis	Division of Market Oversight.
140.74(c)	Division of Economic Analysis	Division of Market Oversight.
140.75	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.76(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.76(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.77(a)	Director of the Division of Economic Analysis and the Division of Trading and Markets or their.	Director of the Division of Market Oversight or the Director's.
140.77(b)	Directors of the Division of Economic Analysis and the Division of Trading and Markets may submit any matter which has been delegated to them.	Director of the Division of Market Oversight may submit any matter which has been delegated to the director.

Section	Remove	Add
140.77(c)	Directors of the Division of Economic Analysis and the Division of Trading and Markets.	Director of the Division of Market Oversight.
140.91(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.91(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.92(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.92(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.92(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.93(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.93(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.93(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.95(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.95(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.94(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.96(a)	Division of Economic Analysis	Division of Market Oversight.
140.96(b)	Division of Economic Analysis	Division of Market Oversight.
140.96(b)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.96(c)	Division of Economic Analysis	Division of Market Oversight.
140.96(c)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.96(d)	Division of Economic Analysis	Division of Market Oversight.
140.96(d)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.97(a)	Division of Economic Analysis	Division of Market Oversight.
140.97(b)	Division of Economic Analysis	Division of Market Oversight.
140.97(c)	Division of Economic Analysis	Division of Market Oversight.
140.99(a)(5)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
140.99(a)(5)	Division of Economic Analysis	Division of Market Oversight.
140.735–2a footnote 7	Division of Economic Analysis	Division of Market Oversight.
145.6(a)	Division of Economic Analysis, Commodity Futures Trading Commission, One World Trade Center, Suite 3747, New York, New York 10048, Telephone: (212) 466–2061.	Commodity Futures Trading Commission, 140 Broadway, New York, New York 10005 Telephone: (646) 746–9700.
145.6(a)	Division of Trading and Markets, Commodity Futures Trading Commission, 300 South Riverside Plaza, Suite 1600 North, Chicago, Illinois 60606, Telephone: (312) 353–5990.	Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661, Telephone: (312) 596–0700.
145.6(a)	Division of Trading and Markets, Commodity Futures Trading Commission, 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone (612) 370–3255.	Commodity Futures Trading Commission, 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone: (612) 370–3255.
145.6(a)	Division of Trading and Markets, Commodity Futures Trading Commission, 4900 Main Street, Suite 721, Kansas City, Missouri 64112, Telephone: (816) 931–7600.	Commodity Futures Trading Commission, 4900 Main Street, Suite 721, Kansas City, Missouri 64112, Telephone: (816) 931–7600.
Pt. 145, App A, (e)	Division of Economic Analysis	Division of Market Oversight.
Pt. 145, App A, (g)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
150.3(b)	Division of Economic Analysis	Division of Market Oversight.
150.4(e)	Division of Economic Analysis	Division of Market Oversight.
170.12	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
171.28	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
171.28	Division of Economic Analysis	Division of Market Oversight.
171.31(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
171.31(a)	Division of Economic Analysis	Division of Market Oversight.
190.10(a)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(b)(4)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(d) heading & (d)(1)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(d)(2)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.
190.10(d)(3)	Division of Trading and Markets	Division of Clearing and Intermediary Oversight.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

3. Sections 1.4a, 1.41c, and 1.42 are removed and reserved.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

4. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

5. Section 140.99 is amended by revising paragraph (d)(2) to read as follows:

§ 140.99 Request for exemptive, no-action and interpretative letters.

* * * * *

(d) Filing requirements. * * *

(1) * * *

(2) A request for a Letter relating to the provisions of the Act or the Commission's rules, regulations or orders governing designated contract markets, registered derivatives transaction execution facilities, exempt commercial markets, exempt boards of trade, the nature of particular

transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, foreign trading terminals, hedging exemptions, and the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A request for a Letter relating to all other provisions of the Act or Commission rules shall be filed with the Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. The request must be submitted electronically using the e-mail address *dmoletters@cftc.gov* (for request filed with the Division of Market Oversight), or *dcioletters@cftc.gov* (for requests filed with the Division of Clearing and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight or the Division of Clearing and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.

* * * * *

§ 140.100 [Removed]

6. Section 140.100 is removed.

Issued in Washington, DC, this 26th day of September, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–25049 Filed 10–4–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR part 1308

[DEA–225F]

Schedules of Controlled Substances: Rescheduling of Buprenorphine From Schedule V to Schedule III

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to reschedule buprenorphine from a Schedule V narcotic to a Schedule III narcotic under the Controlled Substances Act (CSA). This action is based on a rescheduling recommendation by the Department of Health and Human Services (DHHS) and a DEA review indicating that buprenorphine meets the criteria of a Schedule III narcotic. The DEA published a proposed rule to reschedule buprenorphine on March 21, 2002 (67 FR 13114). The comment period was extended for an additional 30 days until May 22, 2002 (67 FR 20072). The DEA received ten comments but no requests for hearings.

This final action will impose the regulatory controls and criminal sanctions of a Schedule III narcotic on those persons who handle buprenorphine or products containing buprenorphine.

DATES: Effective Date: October 7, 2002. Compliance to some regulatory requirements may be delayed as noted in the Regulatory Requirements section of this document.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background

Buprenorphine is a semisynthetic opioid. As a derivative of thebaine, buprenorphine was controlled in Schedule II of the CSA in 1970 and remained in Schedule II during its research and development for marketing. In 1981, buprenorphine hydrochloride (Buprenex®) was approved for marketing in the United States as an injectable formulation (0.3 mg/ml) for the treatment of moderate to severe pain. The DEA proposed placement of buprenorphine in Schedule V of the CSA after receiving a medical and scientific evaluation and a Schedule V recommendation from the DHHS. However, buprenorphine was not placed in Schedule V of the CSA until April 1, 1985 (50 FR 8104, February 28, 1985) due to a hearing requested by the manufacturer of buprenorphine, Reckitt & Coleman (now Reckitt Benckiser). Since 1985, Buprenex® has remained in Schedule V. As an injectable analgesic, this product has had limited use outside hospital and clinic settings and is the only buprenorphine product presently marketed in the United States.

In December 2001, the DHHS forwarded a recommendation to reschedule buprenorphine to Schedule III of the CSA. This recommendation was based on a reevaluation of buprenorphine's abuse potential and dependence profile in light of numerous scientific studies and years of human experience with this drug. The DHHS compared buprenorphine with other drugs that share similar pharmacological properties and/or medical utility and considered both foreign and domestic data especially in regard to formulations of buprenorphine that are likely to become available for use in the United States. Two New Drug Applications (NDA) have been submitted to the Food and Drug Administration (FDA) for high dose sublingual (under the tongue) tablets. These potential addiction treatment products include: (1) Subutex®, a mono or single entity buprenorphine product (2 and 8 mg tablets), and (2) Suboxone®, a combination product in a 4:1 ratio of buprenorphine to naloxone (2: 0.5 and 8: 2 mg tablets). The Subutex® and Suboxone® NDAs remain pending at the FDA but approvable letters have been issued for both products and they are likely to receive final marketing approval in 2002. Low dose sublingual tablets (0.1 , 0.2 and 0.4 mg) have been available in numerous countries throughout the world and, in recent years, high dose sublingual tablets (2 and 8 mg) have been introduced in many countries for the treatment of opioid dependence.

After consideration of the DHHS scientific and medical evaluation and Schedule III recommendation, the DEA completed an independent eight factor analysis that included the following factors in accordance with 21 U.S.C. 811(c):

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

On March 21, 2002, the DEA published a proposed rule to place buprenorphine in Schedule III of the CSA (67 FR 13114). This notice will

finalize that proposed rule. Schedule III control requires the DEA to make the following findings in accordance with 21 U.S.C. 812 (b):

1. Buprenorphine has a potential for abuse less than the drugs or other substances in Schedules I and II.

2. Buprenorphine has a currently accepted medical use in treatment in the United States.

3. Abuse of buprenorphine may lead to moderate or low physical dependence or high psychological dependence.

Comments to the Proposed Rule

The DEA received comments from ten interested parties. Two commenters were in support of the proposed rule, seven commenters were in opposition to the proposed rule and one individual requested that the DEA be mindful of possible conflicts of interest by individuals/organizations responding to this proposed rule. One commenter felt that Schedule II more accurately reflected the abuse potential and dependence profile of buprenorphine while another commenter felt that the evidence suggests that buprenorphine should remain in Schedule V. Five commenters support differential scheduling of buprenorphine products and contend that the buprenorphine/naloxone product under development has less abuse potential. The following is a listing of all commenters and a brief summary of their comments:

1. The Medical Director of the American Psychiatric Association (APA) commented on behalf of this organization. He stated that the APA supports the proposed rule to reschedule this drug. However, once buprenorphine has been approved for use in opioid substitution treatment, the APA recommends that the DEA study and evaluate the actual abuse over a three-year period to more accurately determine whether placement in Schedule III is appropriate.

2. The President of the American Association for the Treatment of Opioid Dependence (AATOD) submitted comments on behalf of the Board of Directors of AATOD in support of a Schedule III narcotic classification for buprenorphine and its products.

3. The Chair Committee for the Treatment of Opioid Dependence of the California Society of Addiction Medicine (CSAM) and the President of CSAM recommended less restrictive scheduling of the buprenorphine/naloxone combination product (Suboxone®) compared to the mono buprenorphine product (Subutex®) should they be approved for marketing. They believe it is important to convey the message to physicians about the lower risk of abuse and diversion of the combined formulation. They believe that differential scheduling would encourage physicians to appropriately choose the combination product for treatment of addicted patients. No data was provided in support of their contentions.

4. A member of the Board of Directors of the American Academy of Addiction Psychiatry (AAAP) commented on behalf of this organization. The AAAP contends that the available literature and research on buprenorphine do not support the DEA recommendation and recommends differential scheduling of buprenorphine products. Because Buprenex® has been in Schedule V and has not been associated with widespread diversion and abuse, they believe there is no compelling reason to reschedule this medication. Further, they believe there are substantial differences between the two sublingual products intended for addiction treatment. They contend that the buprenorphine/naloxone product is being developed specifically to prevent diversion and illicit injection use. They believe that buprenorphine diversion in other countries has been limited to use by out-of-treatment, opioid dependent, injection drug users. Should both products be placed in Schedule III, they believe that there will be no incentive for physicians to differentially make use of one product. They recommend Schedule V for Buprenex® and Suboxone® and Schedule III for Subutex®. No data was submitted to the DEA in support of these comments.

5. The President of the American Society of Addiction Medicine (ASAM) commented on behalf of this organization. His views also represent those of the Chairmen of ASAM's Medication Development Committee and the Opioid Agonist Treatment Committee. They contend that placing all buprenorphine-containing products into the same schedule is not consistent with the pharmacology and the intended clinical use of the buprenorphine/naloxone sublingual tablets. They believe that sufficient evidence currently exists to support a lower parenteral abuse potential of the combination product as compared to the mono product. They feel that differentially scheduling these addiction medications would encourage physicians to prescribe the naloxone combination product in preference to the mono-product. No data was submitted to the DEA in support of these comments.

6. The President of the College on Problems of Drug Dependence (CPDD) commented on behalf of this organization. This commenter requests that the DEA consider differential scheduling for the potential addiction treatment medications, Suboxone® and Subutex®. She believes there is strong evidence to support differential scheduling: the combination product will lead to lower abuse liability and less parenteral abuse by individuals who are currently dependent on opioids because the naloxone will precipitate withdrawal. The mono-product will not precipitate withdrawal. No data was submitted to the DEA in support of these comments.

7. The President of Reckitt Benckiser Pharmaceuticals, the manufacturer of Buprenex® and the sponsor of the two NDAs for buprenorphine products in the treatment of opioid dependence, does not support the proposed rule for the following reasons:

(a) Little diversion or abuse of buprenorphine has been noted in the United States in the 15 years the product has been marketed.

(b) The DEA has disregarded data on the development of the naloxone combination product that shows significantly less potential for diversion and abuse.

(c) The DEA disregards the additional controls imposed on these newer products by the Drug Addiction Treatment Act of 2000 (DATA).

(d) The Schedule III control for all formulations of buprenorphine would thwart company efforts to ensure that the combination product, if approved, is the primary medication that should be utilized for addiction treatment. By not differentially scheduling these products, the DEA is removing the incentive for physicians to prescribe the combination product rather than the single entity product.

The company feels that Buprenex® should be left in Schedule V, and the addiction medications, if approved, should be placed in Schedule IV. Or, as an alternative, the substance, buprenorphine, should be placed in Schedule III (which would include Subutex®), Suboxone® should be placed in Schedule IV and buprenorphine products with less than 1 mg/ml should be placed in Schedule V. No data was provided to the DEA in support of these comments.

8. The law offices of Hogan & Hartson submitted comments on behalf of a client. Hogan & Hartson requests that DEA enter an order immediately placing buprenorphine and all products containing buprenorphine under Schedule II based on their contention that:

(a) Buprenorphine has a high potential for abuse consistent with the

abuse potential of Schedule II drugs. The partial agonist activity, including safety in overdose, is not supported and, even if true, does not warrant a change from the conclusion that buprenorphine has a high potential for abuse.

(b) Safety in overdose is not a relevant factor in deciding if a drug has less abuse potential than other similar drugs.

(c) The DEA failed to consider that the illusion of safety may result in greater potential for abuse.

(d) Scheduling under the CSA is a relative analysis and depends on aligning a drug with the closest set of comparators. Hogan and Hartson believe that the closest set of comparators are Schedule II.

(e) Buprenorphine is a gateway drug which compounds public health risks.

(f) The DEA failed to give adequate weight to the fact that buprenorphine is administered by many routes of administration and in combination with other drugs.

(g) The DEA has not been consistent in its decision making process and has failed to meet the non-arbitrary agency action requirements. The finding that buprenorphine has a potential for abuse less than Schedule I or II substances is arbitrary and capricious and not supported by the underlying administrative record.

(h) The DEA position that buprenorphine most closely resembles Schedule III substances with respect to physical and psychological dependence is contrary to the evidence (even if true, DEA must give greater weight to the abuse potential).

(i) The DEA erred in considering that buprenorphine be available for office-based use as it is not a relevant factor in the scheduling analysis.

(j) Placement of buprenorphine in Schedule III to make it available for office based care will have a significant impact on opioid treatment programs. The DEA is required to analyze this issue and follow the mandate of the Regulatory Flexibility Act.

(k) The CSA requires DEA to make a reasonable predictive judgment about a drug and should not take a reactive posture by stating ''should significant abuse or diversion of buprenorphine occur, DEA will initiate actions to increase its regulatory control.''

In support of these comments, Hogan & Hartson referred to various legal citations and statements made by DEA and FDA in the scheduling review documents on buprenorphine. No new scientific data was submitted.

9. The law offices of Hyman, Phelps & McNamara, P.C. commented on behalf of Purdue Pharma. After reviewing the information that the FDA and the DEA relied upon in order to reach a decision to propose Schedule III placement for buprenorphine, they contend that:

(a) The DEA has not presented an adequate basis for the proposed rulemaking.

(b) The proposed rule has not adequately described the pharmacology of the drug substance buprenorphine or the drug products that would be affected by this rule.

(c) Many facts cited by the DEA and FDA in their conclusions have been removed from their proper scientific context. This is particularly evident in the description of buprenorphine and in the basis for the DEA conclusion that buprenorphine may cause high psychological dependence.

(d) The DEA and FDA have not explained why data generated since the original scheduling action for buprenorphine in 1985 would alter the original conclusions that buprenorphine has a low potential for abuse and low potential for physical and psychological dependence.

(e) The DEA and FDA have inadequately described the conditions of use of Subutex® in France and the impact of such use on either the mortality associated with heroin addiction or the frequency of abuse of buprenorphine. It is asserted without supporting data that the conditions of use that will apply to Suboxone® and Subutex®, should they be approved for use in the United States, will inevitably lead to significant abuse of buprenorphine. There is no discussion of how the proposed use of Subutex® in the United States may differ from the use of this product in France. There is not an acknowledgment in the proposed rule that one of the products under development, which is not available in France, contains naloxone which is expected to deter intravenous abuse.

(f) The additional controls that would be provided by moving buprenorphine to Schedule III are not described and no rationale is provided for the assertion that the Drug Addiction Treatment Act will not provide adequate safeguards for the public health.

(g) The overwhelming scientific and medical evidence demonstrates that buprenorphine should not be rescheduled. If buprenorphine is rescheduled it should not be placed any higher than Schedule IV.

Hyman, Phelps & McNamara relied on data from the World Health Organization (WHO), United Nations (UN), International Narcotics Control Board (INCB) statistics, emergency department mentions in the Drug Abuse Warning Network (DAWN), DEA forensic laboratory data, literature cited in FDA and DEA review documents on buprenorphine and case law.

1. The Director of the Edmond de Rothschild Foundation, Chemical Dependency Institute of Beth Israel Medical Center in New York City, urged the DEA to assess possible conflict of interest of individuals/organizations submitting comments on the proposed rule to place buprenorphine in Schedule III of the CSA.

DEA Response to Comments

The DEA has thoroughly reviewed, analyzed and considered all the comments submitted in response to the proposed rule to place buprenorphine into Schedule III of the CSA. Most commenters averred that the DEA failed to consider data that demonstrates that buprenorphine has a lower (or higher) abuse potential/dependence profile than Schedule III substances. In most instances, no data was provided to support these contentions. Two commenters, however, provided data that they relied upon in opposing the proposed rule. The relevant data cited by these commenters were available to and considered by DHHS and DEA in deliberations regarding the proposal to reschedule buprenorphine. In several cases, the same medical, scientific and other data cited by FDA and/or DEA in scheduling review documents are interpreted differently by the commenters.

Fundamental to all of the comments in opposition to the proposed rule is the belief that buprenorphine and/or products containing buprenorphine have an abuse potential and dependence profile other than Schedule III. The following is a brief summary of the data used by the DEA to conclude that the most appropriate placement for buprenorphine and products containing buprenorphine is in Schedule III of the CSA classified as a narcotic. Following this summary (under the headings of Abuse Potential of Buprenorphine and Dependence Profile of Buprenorphine), specific questions or comments raised by the commenters are addressed.

Abuse Potential of Buprenorphine

The evaluation of the abuse potential of any substance considers a number of factors including (but not limited to) its chemistry (including ease of synthesis and evidence of clandestine production), pharmacology (including routes of administration, profile of effects under various conditions and populations, duration of action, drug interactions), intended use, populations at-risk of abuse and actual abuse data.

The subjective effects (alterations in mood, feeling and thinking) produced by a drug may lead to reinforcement of drug-taking behavior and abuse (Jasinski, 1991). The abuse potential criteria under the CSA is a relative one with Schedule I and II requiring substances to have a high abuse potential and Schedule III, IV and V substances having progressively lower abuse potentials. This necessitates the comparison of the abuse potential of the substance under review with other substances. Morphine, a Schedule II substance with high abuse potential, is often used as a standard for comparing the effects produced by other opiates; the more an opiate/opioid is morphine-like as perceived by the user, the more likely the substance, if available, will be abused.

Buprenorphine is a semi-synthetic opioid derived from thebaine. It has high affinity for, low intrinsic activity at, and slow dissociation from opioid receptors (for review see Johnson & McCagh, 2000). These properties contribute to its protracted occupancy at opioid receptors.

Buprenorphine is a partial agonist (activator) at the mu-opioid receptor and an antagonist (blocker) at the kappa-opioid receptor (Richards and Sadee, 1985; Sadee *et al.*, 1982). Mu receptor activation is associated with analgesia, miosis (pupillary constriction), respiratory depression, euphoria, reduced gastrointestinal motility and dependence. Kappa receptor activation produces analgesia, miosis, sedation, dysphoria and psychotomimetic effects including disorientation and/or depersonalization. As a partial agonist at the mu receptor, buprenorphine produces effects similar to pure mu agonists (like morphine) but effects are less dose-dependent producing a ''ceiling effect'' on both physiological and psychological properties: dose increases above the ''ceiling dose'' do not produce greater effects (Pickworth *et al.*, 1993; Walsh *et al.*, 1994, 1995). Various effects produced by buprenorphine have different ceiling doses. At clinically relevant doses, the ''ceiling'' for some effects produced by buprenorphine administration may not be reached. As a consequence, buprenorphine may act more like a pure mu agonist (depending on dose, effect being measured and individual variability) and may produce significant dose-related euphoria, drug liking, respiratory depression and sedation over a wide range of doses (*see* citations below). However, buprenorphine's unique pharmacology results in greater safety (less respiratory depression at very high doses), less physical dependence and greater flexibility in dose scheduling than pure mu agonists such as morphine (Johnson & McCagh, 2000).

Although poorly available by the oral route due to poor absorption and extensive metabolism in the small intestine and liver, buprenorphine can be taken sublingually (Walter *et al.*, 1996). As a drug of abuse, tablets have been crushed and snorted, smoked and placed in aqueous solutions and injected (for example: Strang, 1985, 1991; Gruer *et al.*, 1993; Kintz, 2001). The absolute bioavailability of sublingual tablets is approximately 30 percent when the extent of absorption of a sublingual solution is compared to an intravenous dose (Mendelson *et al.*, 1997a). Dissolving buprenorphine in aqueous alcohol enhances sublingual absorption: the bioavailability of the tablet is about 50 percent that of a sublingual aqueous alcohol solution containing equivalent amounts of buprenorphine (Nath *et al.*, 1999; Schuh *et al.*, 1999a). This difference in the bioavailability of sublingual aqueous alcohol solutions and sublingual tablets of buprenorphine may account for some of the variability in data involving dose effects. Data generated using animal models suggest that buprenorphine may have relatively high bioavailability in humans by the intranasal route (Brewster *et al.*, 1981; Lindhardt *et al.*, 2000).

The more ways a drug can be administered by various populations of abusers increases its likelihood to be abused. Individuals that only abuse pharmaceuticals by swallowing tablets or liquids (like most abusers of hydrocodone products) would be less likely to abuse buprenorphine. At the same time, the lack of oral bioavailability increases the likelihood that buprenorphine will be abused in a manner that enhances its reinforcing effects. Abuse data indicates that buprenorphine is often injected. While heroin addicts and experienced narcotic abusers have been the primary abusers of buprenorphine, data from England, France, Scotland, and Ireland demonstrate that, if available, buprenorphine is abused by young, non-dependent drug abusers (Coggans *et al.*, 1991; Forsyth *et al.*, 1993; Frischer, 1992; Hammerseley *et al.*, 1990; O'Connor *et al.*, 1988).

The DEA has no evidence that buprenorphine is clandestinely produced; diverted pharmaceutical products are the only source of this drug for those who would choose to abuse it. Like all substances with abuse potential, the greater the availability of buprenorphine (greater use due to new dosage forms and new indications) the more likely it will be abused. High-dose, sublingual tablets intended for narcotic treatment and utilized outside the constraints of traditional narcotic treatment programs increases the risk that these products will be diverted, trafficked and abused. Simply stated, providing an abusable substance to known drug abusers imparts enhanced risks. While little diversion and abuse of the injectable formulation, Buprenex®, has occurred in the United States, the circumscribed use (few prescriptions and primary use in hospital settings) has limited the availability of this substance for abuse purposes. Recent increases in the use of Buprenex® may be related to the use of this product for narcotic treatment and detoxification: IMS National Disease and Therapeutic Index data and DEA field office reports indicate that many doctors are illegally using Buprenex® for narcotic treatment and detoxification. The Drug Addiction Treatment Act of 2000 (DATA) does not apply to Buprenex® as it has not been approved by the FDA for use in narcotic treatment.

Drug discrimination studies are among the most rigorous laboratory procedures for assessing the substitutability of psychoactive drugs and provide valuable information about the subjective effects produced by a drug (Schuster & Johanson, 1988). In drug discrimination studies, buprenorphine generally substitutes for mu agonists across several animal species including humans (for example: Leander, 1983; France *et al.*, 1984; Young *et al,* 1984; France & Woods, 1985; Hoffmeister, 1988; Picker & Dykstra, 1989; Negus *et al.*, 1990; Preston *et al.*, 1989, 1992; Bigelow and Preston, 1992; Paronis & Holtzman, 1994; Walker *et al.*, 1994). These studies suggest that buprenorphine shares more similar effects with pure mu agonists than with prototypic partial agonists (like butorphanol and pentazocine that are in Schedule IV of the CSA). For example, Preston & Bigelow (2000) conducted a drug discrimination study in adult males with histories of opioid abuse (but not physically dependent at time of study) trained to discriminate hydromorphone (a Schedule II pure mu agonist) from placebo (saline). Of the partial agonists tested (buprenorphine, butorphanol, pentazocine and nalbuphine) only buprenorphine fully substituted for hydromorphone and produced dose-related increases in hydromorphone-appropriate responses. Pentazocine showed an inverted U-shaped dose-response curve while butorphanol and nalbuhine did not

substitute for hydromorphone at any dose tested.

The subjective effects of buprenorphine, with or without naloxone, have been studied under a wide range of conditions including study subjects, dose ranges, routes of administration and timing intervals. In addition, opiate or naloxone challenge in buprenorphine maintained clients vary significantly with study conditions. Despite the methodological differences in these studies, certain conclusions can be made regarding the abuse potential of buprenorphine (with or without naloxone) in different populations of users. The following represents a sampling of those studies.

Studies conducted in non-drug abusers (for example: Manner *et al.*, 1987; Saarialho-Kere *et al.*, 1987; MacDonald *et al.*, 1989; Fullerton *et al.*, 1991; Zacny *et al.*, 1997) indicate that buprenorphine, like morphine, produces dose related impairment of psychomotor performance, euphoria, miosis, respiratory depression, somnolence and nausea. In studies with non-dependent, opioid-experienced subjects, the most consistent finding with buprenorphine administration (sublingual, intravenous, intramuscular, subcutaneous) is a dose-related increase in ''drug liking'' and ''good drug effects'' over a wide range of doses (for example: Jasinski *et al.*, 1978; Preston *et al.*, 1992; Weinhold *et al.*, 1992; Pickworth *et al.*, 1993; Preston and Bigelow, 1994; Foltin and Fischman, 1996; Greenwald *et al.*, 1999; Strain *et al.*, 2000; Comer *et al.*, 2002). In opioid dependent subjects, buprenorphine can substitute for heroin. Clinical data indicate that when equipotent doses of buprenorphine and methadone are used, buprenorphine is as effective as methadone in suppressing opioid withdrawal (Bickel *et al.*, 1988; Johnson *et al.*, 1992). Jasinski *et al.* (1978) reported that chronic subcutaneous administration of a daily dose of 8 mg of buprenorphine produces morphine-like subjective effects and euphoria equivalent to 30 mg of morphine sulfate administered four times daily. In a sample of experienced detoxified opiate abusers, Bedi *et al* (1998) examined the abuse liability of 0.6 mg of buprenorphine, 16 mg morphine and 30 mg pentazocine. Buprenorphine produced significant euphoria and was identified as heroin rather than pentazocine. In a study with opiate-dependent heroin abusers, intravenous administration of 2 mg of buprenorphine produced potent opiate agonist effects (Mendelson *et al.*, 1996). Seven of eight subjects estimated that this dose of buprenorphine had a street value between $5 and $20 but of lesser value than heroin. In subjects maintained on daily sublingual buprenorphine (8 mg), intramuscular injections of buprenorphine (4, 8, 16 mg) produced opioid agonist-like effects (Strain *et al.*, 1997). Collectively, these data suggest that buprenorphine has abuse potential in a wide spectrum of individuals. Vulnerable populations include drug naive individuals (new drug abusers), opiate experienced individuals and opiate dependent individuals.

Many of the comments to the proposed rule for buprenorphine rescheduling expressed concern about placing the buprenorphine/naloxone combination product in the same schedule as single entity products. They contend that the combination product has significantly less abuse potential warranting lesser control. However, the data regarding naloxone and buprenorphine/naloxone administration in various populations of users does not support a lower schedule.

Naloxone is an opioid antagonist that acts competitively at opioid receptors. It is used to reverse opioid central depression, including respiratory depression (the leading cause of death in narcotic overdoses), and has been given intravenously to precipitate withdrawal symptoms in the diagnosis of opioid dependence. It is generally injected and has a short duration of action. Taken sublingually, naloxone has little bioavailability.

The buprenorphine/naloxone combination product was specifically developed to inhibit intravenous abuse by heroin addicts. In theory, the injection of buprenorphine/naloxone combination in opioid-dependent subjects should precipitate a moderate to severe withdrawal syndrome similar to abrupt withdrawal from opioids. This withdrawal syndrome develops within minutes of injection and subsides in one to two hours. However, a substantial percentage of individuals currently abusing heroin or other opiates do not show any evidence of withdrawal when challenged with naloxone. Between 34 and 61 percent of patients applying for methadone maintenance may have minimal or no response to intravenous or intramuscular naloxone in doses ranging from 0.2–1.2 mg (Blachly, 1973; Judson *et al.*, 1980; Kanof *et al.*, 1991; Peachy and Lei, 1988; Zilm and Sellers, 1978). While addicts that seek treatment may have very high levels of psychological dependence, this data suggest that they may not have high levels of physical dependence on narcotics.

The extent of withdrawal associated with injection of buprenorphine/naloxone combination, should it occur, is directly related to the buprenorphine/naloxone dose and the level of dependence of the subjects. For example, individuals maintained on 30–60 mg of methadone (Strain *et al.*, 1995; Mendelson *et al.*, 1997) or 60–120 mg intramuscular morphine (Mendelson *et al.*, 1999; Fudala *et al.*, 1998; Schuh *et al.*, 1996), opiate doses likely to produce significant physical dependence, experience an unpleasant opioid withdrawal syndrome after injection of low doses of naloxone or buprenorphine/naloxone. Mendelson *et al.* (1999) studied the effects of three intravenous buprenorphine and naloxone combinations on agonist effects and withdrawal signs in 12 opiate-dependent subjects. Following stabilization on a daily dose of 60 mg morphine intramuscularly, subjects were challenged with buprenorphine alone (2 mg intravenously) or in combination with naloxone in ratios of 2:1, 4:1, and 8:1 (1, 0.5, and 0.25 mg of naloxone). Buprenorphine alone did not precipitate withdrawal and produced effects similar to morphine. Dose-dependent increases in withdrawal signs and symptoms and a decrease in opioid agonist effects occurred after all naloxone combinations. At the 4:1 ratio (that which has been chosen for the marketing of the combination product), opioid agonist effects were attenuated by about 50 percent and unpleasant effects were observed for about 30 minutes. These data suggest that injection of the combination buprenorphine/naloxone product has less abuse potential in non-buprenorphine opiate-dependent addicts.

In New Zealand, the only country that has marketed a buprenorphine/naloxone combination product, extensive intravenous abuse of the 0.2 mg buprenorphine tablet among opiate abusers led to the 1991 reformulation of buprenorphine to include 0.17 mg of naloxone. Robinson *et al.* (1993) conducted two separate surveys among narcotic addicts presenting for treatment before and after the launch of the naloxone combination product. In 1990, 81 percent of the patients reported intravenous buprenorphine abuse in the previous 4 weeks, 50 percent reported exclusive use of buprenorphine and 65 percent tested positive for the drug. In 1991, 57 percent reported intravenous abuse of the combination tablet and 43 percent tested positive for the combination. One third of the patients that used the combination product intravenously reported instances of withdrawal symptoms. Only one patient

reported exclusive use (by injection) of buprenorphine/naloxone and experienced no adverse withdrawal effects. The authors concluded that the combination product did act as a deterrent for some drug abusers but did not stop injection practices. In addition, the authors noted that the injection of the combination product would not produce withdrawal symptoms (act as a deterrent) in individuals who were not physically dependent on narcotics or those who were physically dependent on buprenorphine.

Injection of buprenorphine/naloxone in opioid naive individuals, non-dependent opioid abusers or buprenorphine maintained addicts will likely result in opioid agonist effects. For example, intramuscular administration of buprenorphine alone (0.4 and 0.8 mg/70 kg) or in combination with naloxone (0.4 and 0.8 mg/70 kg) was examined in seven non-physically dependent opioid abuser volunteers (Weinhold et al, 1992). In subjective measures of drug effects, buprenorphine alone produced dose dependent increases in ''drug liking'', ''high'', and agonist ratings. Administration of 0.4 mg buprenorphine in combination with 0.4 mg naloxone produced positive subjective opiate effects greater than 0.4 mg of buprenorphine alone and a greater percentage of subjects identified the naloxone-buprenorphine combination as an opiate when compared to buprenorphine treatment alone. However, increasing the naloxone concentration to 0.8 mg (twice the concentration of buprenorphine) significantly reduced opioid agonist effects.

In another study with opioid-dependent volunteers stabilized on 8 mg/day sublingual buprenorphine, intravenous buprenorphine (8 mg) with naloxone (4 or 8 mg) produced subjective effects similar to 8 mg sublingual buprenorphine and did not precipitate withdrawal (Harris *et al.*, 2000). Buprenorphine's high affinity for opioid receptors prevents naloxone from displacing buprenorphine already bound to these sites. In some populations of buprenorphine-maintained clients, extremely high intravenous doses of naloxone are required to even partially displace buprenorphine from opioid receptors (Koston *et al.*, 1990).

In non-dependent opioid abusers, sublingual administration of buprenorphine/naloxone (1/0.25, 2/0.5, 4/1, 8/2, 16/4 mg) produced opioid agonist-like effects (Strain *et al.*, 2000).

The data suggest that the buprenorphine/naloxone combination products will likely produce an unpleasant withdrawal when injected by heroin-dependent subjects. However, this combination drug product will not be a serious deterrent to injection by marginally or non-physically dependent users or by individuals stabilized on this medication for addiction treatment (those individuals that will probably have the greatest access to this drug) or by injecting addicts who are abusing and dependent on buprenorphine. In addition, this combination product, taken sublingually, is not a deterrent for abuse by most populations. Studies on snorting and smoking this combination are not available.

One of the many objectives of opioid replacement therapy for addiction treatment is to deter addicts from the continued use of heroin or other opiates. Chronic buprenorphine dosing produces cross-tolerance to other opioids (Jasinski *et al.*, 1978; Bickel *et al.*, 1988) and may limit the magnitude of effects produced by supplemental challenges of other opioids.

In subjects maintained on a sublingual dose of 8 mg/day of buprenorphine, acute supplemental intramuscular doses of buprenorphine (4, 8 and 16 mg) or hydromorphone (9 and 18 mg) administered 16 hours after the buprenorphine daily dose produced opioid agonist effects although there was a lack of graded dose-effects for hydromorphone (Strain *et al.*, 1997). The addition of naloxone to the maintenance dose of buprenorphine does not impart greater blockade (Strain *et al.*, 2002).

In a study to determine what dose of buprenorphine would effectively block the reinforcing effects of intravenous heroin (Comer *et al.*, 2001), both 8 and 16 mg of sublingual buprenorphine maintenance dosing failed to block the effects of 12.5 mg or 25 mg of heroin. These data indicate that buprenorphine maintenance (even at relatively high maintenance doses) may not serve as a deterrent for patients who chose to continue their illicit use of heroin or other opiates.

Buprenorphine has been diverted, trafficked and abused in many countries throughout the world. Starting in the late 1970s, low-dose buprenorphine sublingual tablets and injectable solutions were approved for marketing in many countries. High-dose buprenorphine for narcotic treatment gained marketing approval in France in 1996 and has since been approved in several other countries.

Buprenorphine abuse was detected in many countries soon after it was approved for marketing. The initial profile of low abuse liability and high therapeutic index (safety) fueled decisions that allowed the initial marketing of buprenorphine without any significant restrictions or regulatory controls. Its easy accessibility and acceptability by a wide spectrum of drug abusers, including heroin addicts, resulted in substantial abuse (for example: Levelle *et al.*, 1991; Rainey, 1986; Strang, 1995,1991; Tracqui *et al.*, 1998; Kintz, 2001; Basu, 1998; Robinson *et al.*, 1993; Dore *et al.*, 1997, Singh *et al.*, 1992; Chowdhury *et al.*, 1998). Austria, Australia, Belgium, Germany, France, India, New Zealand, Norway and Sweden have all increased the regulatory controls on buprenorphine. In 1988 the World Health Organization (WHO) recommended that buprenorphine be placed in Schedule III of the Psychotropic Convention. This action was taken by the United Nations in 1989.

A number of factors have contributed to the illicit use of buprenorphine. In areas where heroin has been less available or of low quality, buprenorphine's low cost, easy accessibility, high purity and substantial morphine-like effects have contributed to its popularity on the illicit market. Doctor shopping and forged prescriptions are important sources of this drug and, according to the International Narcotics Control Board (INCB), large quantities of buprenorphine have been trafficked across international borders.

While extensive diversion, trafficking and abuse have been documented for both the sublingual tablets and injectable formulations, the sublingual tablet has a greater appeal to a wider range of drug abusers. The variety of routes of administration may account for this preference. The tablets can be abused by the sublingual route or they can be crushed and snorted or the powder can be solubilized and injected.

In summary, unlike Schedule IV partial mu agonists, buprenorphine is recognized as morphine-like in many drug discrimination studies and produces effects similar to morphine over a wide range of doses. Significant abuse has been documented in many countries although various factors, including the lack of regulatory controls placed on buprenorphine and the scarcity of high purity heroin, have played a role in contributing to this abuse. Buprenorphine's partial agonist effects make buprenorphine less desirable than pure mu agonists in Schedule I or II. The extent to which buprenorphine is able to produce euphoria and ''good drug'' effects limits its use by opiate tolerant abusers. While buprenorphine can substitute for heroin,

it is rarely preferred over high quality heroin. In addition, the reduced respiratory depressant effects of buprenorphine (as a consequence of its ''ceiling effect'') imparts greater safety in overdose than other pharmaceutical narcotics controlled in Schedule II.

In reviewing all the data relevant to the abuse potential, including the comments and the DHHS evaluation, the DEA concludes that buprenorphine has an abuse potential less than narcotics in Schedule I or II of the CSA but greater than Schedule IV narcotics.

Dependence Profile of Buprenorphine

In addition to having abuse potential, most drugs controlled under the CSA are capable of producing dependence, either physical (physiological) or psychological. Physical dependence refers to the physiological changes produced by repeated use of a drug that necessitates the continued administration of the drug to prevent a withdrawal syndrome. Psychological dependence refers to the need or craving for a drug that compels an abuser to continue drug use.

Chronic buprenorphine administration is associated with physical dependence (for example see: Jasinski *et al.*, 1978; Kosten *et al.*, 1988, 1990; San *et al.*, 1992; Eissenber *et al.*, 1996). The extent of physical dependence, as measured by an abstinence syndrome, has been characterized as mild to moderate in intensity and of long duration. The profile of withdrawal effects/duration varies with buprenorphine dose, route of administration and duration of chronic use. While some aspects of the abstinence syndrome approach those which occur with pure mu agonists, generally the withdrawal is reported as less intense and may not require pharmaceutical intervention for relief of adverse withdrawal effects.

Jasinski *et al.* (1978) conducted the original clinical abuse liability studies evaluating buprenorphine's abuse potential. Buprenorphine was shown to produce morphine-like subjective, behavioral and physiological effects and morphine-like physical dependence. The abstinence syndrome observed after abrupt withdrawal of chronically administered buprenorphine (8 mg subcutaneous for 60 days) was delayed producing peak Himmelsbach abstinence scores after about two weeks. Peak withdrawal effects were clinically significant but of lesser magnitude than pure mu agonists. Withdrawal effects included loss of appetite, malaise, insomnia, sensitivity of the skin, lacrimation, rhinorrhea, perspiration, gooseflesh, nausea, leg aches and backaches. These effects were variably reported as mild to moderate and clients requested an opiate to alleviate the symptoms.

In another study examining the physical dependence profile of buprenorphine, 19 heroin dependent male subjects were maintained on 8 mg sublingual buprenorphine for 16 days followed by an additional 18 days of daily or every other day dosing of 8 mg (Fudala *et al.*, 1990). Abrupt discontinuation in buprenorphine dosing produced an abstinence syndrome starting within the first 72 hours, peaking within 3 to 5 days and diminishing after 8 to 10 days. Over 50 percent of the participants required therapeutic intervention for withdrawal symptoms.

In a report on the use of Subutex® in France (Ministry of Health of France, 1998), clinicians describe a buprenorphine abstinence syndrome similar to abrupt withdrawal from methadone, characterized by 2 to 3 days of no symptoms followed by 10 days of unpleasant symptoms. Abrupt withdrawal of buprenorphine produced effects approaching that of methadone withdrawal but with periods that were very difficult to bear due to the continual switching between a normal state and a state of withdrawal.

One of the clearest indications of buprenorphine physical dependence potential is data gathered on neonates of buprenorphine maintained mothers (Fisher *et al.*, 2000). Buprenorphine neonatal abstinence syndrome (NAS) was also reported in postmarketing data from France. The withdrawal syndrome, including tremor and autonomic hyperreflexia, is generally mild to moderate in severity. Between 1996 and the first six months of 1999, 66 reports of NAS were reported to the manufacturer.

The extent of psychological dependence produced by buprenorphine is largely dependent on its ability to produce pleasurable effects and the desire or need to continue the use of this drug for those effects. High psychological dependence is associated with significant loss of drug use control, escalation of dose, drug seeking behaviors and maladaptive patterns of substance use despite serious negative consequences. In reviewing the psychological dependence profile of buprenorphine, the DEA considered a number of factors including: drug effects, evidence of diversion, trafficking and abuse of buprenorphine, patterns of drug use and physical or psychological problems associated with continued abuse of this drug.

As reviewed earlier, buprenorphine produces significant morphine-like effects over a wide range of doses and in numerous populations of drug abusers. However, buprenorphine's partial agonist activity often results in shallower dose-response curves with reduced maximal amounts of euphoria, drug liking and/or ''good drug'' effects than many of the pure mu agonists that have been compared to buprenorphine.

Buprenorphine has been extensively diverted, trafficked and abused throughout many countries although those activities have often been fueled by the lack of high purity heroin and limited regulatory controls placed on buprenorphine (Lavelle *et al.*, 1991; Rainey, 1986; Strang, 1995, 1991; Tracqui *et al.*, 1998; Kintz, 2000; Basu, 1998; Robinson *et al.*, 1993; Dore *et al.*, 1997, Singh *et al.*, 1992; Chowdhury *et al.*, 1998). Surveys in several countries show that buprenorphine, along with heroin, temazepam, and amphetamines, ranks among the top drugs most frequently abused (Lavelle *et al.*, 1991; Arditti *et al.*, 1992; Lapeyre-Mestre *et al.*, 1997; Thirion *et al.*, 1999; Shewan *et al.*, 1998; Taylor *et al.*, 1996; Coggans *et al.*, 1991; Barnard *et al.*, 1998). Falsified prescriptions, theft, doctor shopping and street buys have all been identified as sources for buprenorphine.

Buprenorphine use is associated with maladaptive patterns of substance use. In an analysis of 11,186 buprenorphine prescriptions (written in France during 4 months between September through December 1999), 12 percent of the patients received prescriptions from more than two prescribers and 18 percent of the patients were judged as having deviant maintenance treatment with more than two prescribers or more than 20 mg per day of buprenorphine (Thirion *et al.*, 2002). Data provided in a report generated by a multidisciplinary task force (working under an agreement with the Office of the Junior Minister for Health, the General Health Administration and Schering Plough Laboratories) on the use of Subutex® in France noted that the sales of syringes in France remained stable despite the large numbers of individuals in treatment with Subutex®. At the same time, there was a significant reduction in heroin trafficking and heroin-related deaths. As so many heroin addicts were in treatment and being prescribed medications that are not injectable formulations, the sales for injection equipment should have fallen off drastically. That did not occur. Survey data regarding buprenorphine use indicated that between 12 and 31 percent of buprenorphine users crush the buprenorphine tablets and inject

their own medication or diverted medication, often in combination with benzodiazepines (Ministry of Health of France, 1998). Benzodiazepines purportedly enhance and prolong the euphorigenic properties of buprenorphine. These injection practices are associated with the spread of HIV and other communicable diseases as well as serious overdose events. Over 100 deaths in France have been associated high dose buprenorphine injection in combination with benzodiazepines (Tracqui *et al.*, 1998; Kintz, 2001). In another study of 1018 drug injectors in Glasgow during 1993 and 1994, 41 percent of the injectors reported using buprenorphine and, of those, 26 percent reported at least one overdose (Taylor *et al.,* 1996).

A number of case reports involving buprenorphine abuse demonstrate that buprenorphine is associated with a pathological pattern of use, tolerance development and an opiate abstinence syndrome (Quigley *et al.*, 1984; Singh *et al.*, 1992; Basu *et al.*, 1990). Researchers who have compared the toxicologic and psychopathologic characteristics of buprenorphine dependence with those of heroin found no clinically significant differences (Torrens *et al.*, 1993).

The availability and use of high-dose sublingual tablets is a relatively new phenomenon. The ease with which addicts can be detoxified after extended use of buprenorphine at high maintenance doses has not been well established nor is there information regarding continued abstinence after detoxification from long-term, high-dose use/abuse of buprenorphine. The dependence capacity of buprenorphine may be heightened under these conditions.

In summary, buprenorphine produces low to moderate physical dependence. The withdrawal syndrome is of less intensity and longer duration than most narcotics in Schedule I or II of the CSA. Therapeutic intervention may be necessary to help ameliorate some of the withdrawal affects. Buprenorphine abuse is associated with a loss of control, escalation of dose, drug seeking behaviors and maladaptive patterns of substance use. The data suggest that buprenorphine has a relatively high psychological dependence profile although it is generally less reinforcing than heroin and other pure mu agonists.

Answers to Specific Comments Regarding the Proposed Placement of Buprenorphine in Schedule III of the CSA

Comment: The buprenorphine/naloxone product (Suboxone®) should be placed in a lower schedule than the single entity product (Subutex®) when/if approved for use in the United States. This differential scheduling would show the lower abuse potential of the combination product and would encourage physicians to preferentially prescribe the combination product.

Answer: The addition of naloxone to the buprenorphine high dose sublingual tablets may be aversive in physically dependent opiate abusers but it will have little (may reduce agonist effects) or no effect in all other populations of abusers. It does not have significantly less abuse potential. For more information, see section on abuse potential.

A physician with the appropriate training in narcotic addiction treatment (as mandated by the Drug Addiction Treatment Act of 2000) has, or will be provided, information about the merits of prescribing the combination product. Should the buprenorphine sublingual tablets be approved for use in the United States, the physician will, ultimately, write a prescription for Subutex® or Suboxone® based on an informed decision about what he/she feels is the best treatment for the patient.

Comment: Because Buprenex® has been in Schedule V and has not been associated with widespread diversion or abuse, there is no compelling reason to reschedule this medication.

Answer: As a single entity product, Buprenex® has no other active ingredient in its formulation that may mitigate its abuse potential. While no significant abuse of Buprenex® has occurred in the United States (which both FDA and DEA believe is directly related to its limited use in the United States) many countries have experienced significant abuse of low dose buprenorphine in tablet and injectable formulations. Buprenex® does not have less abuse potential than other buprenorphine products.

Comment: Products containing less than 1 mg/ml of buprenorphine should be placed in Schedule V of the CSA.

Answer: Because buprenorphine is significantly more potent than morphine with much greater bioavailability by the injection route of administration, intravenous injection of 0.3 mg of buprenorphine (1 dosage unit of Buprenex®) produces physiological and subjective effects equivalent to 10 mg or more of intravenous morphine (Zacny *et al.*, 1997). Injection of 1 mg/ml buprenorphine would be approximately equivalent to the injection of 20–30 mg of morphine (calculated by extrapolation and considering the shallower dose-response curve). These doses produce significant opiate effects and, if available, are likely to be attractive to most opiate abusers. In addition, as an injectable product, Buprenex® misuse/abuse is associated with possible behavioral risks including shared needles/syringes that contribute to the spread of HIV, hepatitis and other communicable diseases (also review previous comment and answer). There are no provisions in the CSA to schedule narcotic products based solely on the concentration of active ingredient.

Comment: Buprenorphine diversion has been limited to use by out-of-treatment, opioid-dependent, injection drug users.

Answer: While buprenorphine has been primarily abused by injection, data indicates that it has been abused by other routes of administration and other populations of drug abusers. Data from France indicate that a significant percentage of treatment clients (prescribed high dose, single entity product) abuse their own or diverted medication (see discussions on abuse liability and dependence profile).

Comment: Once buprenorphine has been approved for use in opioid substitution treatment, the DEA should study and evaluate abuse over a three-year period in order to more accurately determine whether placement in Schedule III is appropriate.

Answer: Whenever a drug is placed under control in the CSA, the DEA is responsible for monitoring the use of that drug. In addition, the Drug Addiction Treatment Act (DATA) has mandated that DEA monitor the use of Schedule III–V narcotic treatment drugs utilized under DATA.

Comment: The DEA has disregarded data on the development of the naloxone combination product that show significantly less potential for diversion and abuse.

Answer: The DEA is aware that the combination product was specifically developed to deter injection abuse by physically dependent opioid injecting drug abusers. In addition, DEA wants to support and encourage manufacturers to develop products that will reduce the diversion and abuse of legitimate pharmaceuticals. This combination product will inhibit injection by non-buprenorphine dependent addicts and this is a positive outcome. However, after careful examination of all the relevant data regarding the abuse potential of this product in all populations at-risk for abuse (see section on abuse potential), the DEA has concluded that the combination product does not warrant lesser control than other buprenorphine products.

Comment: The DEA has disregarded the additional controls that would be imposed on Subutex® and Suboxone® by the Drug Addiction Treatment Act of 2000 (DATA).

Answer: As part of the review process, both the DEA and the DHHS carefully considered the use of these narcotic treatment drugs within the context of use under DATA. DATA was never intended to be a solitary regulatory piece of legislation and drugs used under this Act must first meet the findings of a Schedule III, IV or V substance as defined in the CSA (21 U.S.C. 812(b)). DATA does not have an impact on the criteria necessary for scheduling under the CSA. The scheduling criteria and procedures remain unchanged and continue to dictate the requirements for the scheduling of buprenorphine as well as any other controlled substance.

Comment: The potential for buprenorphine to be abused, particularly when marketed in high-dose tablets, is consistent with the abuse potential of other Schedule II substances. The partial agonist activity, including safety in overdose, is not supported and, even if true, does not warrant a change from the conclusion that buprenorphine has a high potential for abuse.

Answer: Under certain conditions and in various populations, buprenorphine has a high potential for abuse. Buprenorphine is recognized as morphine-like in many drug discrimination studies and produces effects similar to morphine over a wide range of doses. This data suggests that buprenorphine, if available, would be very attractive to most narcotic abusers (*see* section on abuse potential especially in regard to doses of 2 mg or more). However, the extent to which buprenorphine is able to produce euphoria, ''good drug'' effects, and respiratory depression is limited by its partial agonist properties. That is, almost uniformly, pure mu agonists are capable of producing greater levels of euphoria and other positive subjective effects than buprenorphine. This is an important issue for a drug-tolerant/dependent narcotic abuser (those likely to be prescribed or have access to high-dose buprenorphine tablets). Buprenorphine may alleviate withdrawal, but may not produce the level of ''feel-good'' effects that the abuser is seeking. Although buprenorphine is abused by heroin addicts, it is rarely preferred over high quality heroin even when buprenorphine is co-administered with benzodiazepines. The low availability and high cost of high purity heroin compared to the high availability and low cost of buprenorphine have been factors in the high incidence of buprenorphine abuse in many countries. Currently, the availability and purity of heroin across the United States is very high while the price of heroin is relatively low in comparison to the projected cost of buprenorphine tablets.

The DEA cited safety in overdose as an example of buprenorphine's partial agonist activity and as a mitigating factor differentiating the abuse potential of buprenorphine from mu agonists in Schedule II of the CSA. Factor (6) under 811(c) requires that the DEA consider what, if any, risk there is to the public health. The commenter argued that this margin of safety exists only when the drug is taken in a carefully controlled clinical setting without concomitant use of other drugs. In fact, narcotic addicts are likely to abuse benzodiazepines with buprenorphine and often by the injection route—all risk factors for buprenorphine-related deaths. The DEA agrees that the increased safety with respect to diminished respiratory depression may be negated under these circumstances. Data from France regarding buprenorphine-related deaths also supports this conclusion. However, for the initiate to opioid abuse or the non-dependent opioid abuser using buprenorphine, the concurrent injection use of buprenorphine with benzodiazepines is less likely to occur. In addition, accidental death or serious overdose by a child or other family member who ingests the medication of an individual prescribed buprenorphine is also less likely to occur. This is an advantage over drugs like morphine, oxycodone and methadone and a relevant factor that carries considerable significance when weighing public health risks and the need for regulatory scrutiny.

In reviewing all the data relevant to the abuse potential, including the evaluation provided by the DHHS as well as all the comments, the DEA concludes that buprenorphine has an abuse potential less than narcotics in Schedule I or II of the CSA but greater than Schedule IV narcotics. It should be noted that a Schedule III substance can have a relatively high abuse potential. The law (21 U.S.C. 812 (b)(3)) does not have an absolute descriptive term (*i.e.* high, low) relating to the abuse potential of Schedule III substances. However, the abuse potential must be less than Schedule I or II.

Comment: The DEA failed to consider that the illusion of safety may result in greater potential for abuse.

Answer: Prior to completing the final scheduling review document, the DEA received the FDA review document and a scheduling recommendation from the DHHS. The FDA specifically cited this concern in their document and the DEA considered this possibility. Buprenorphine has often been touted as a drug with minimal abuse potential and great safety in overdose. In many countries, these misconceptions have led to less regulatory oversight and freer prescribing practices by physicians resulting in easier access and greater availability of buprenorphine for abuse purposes. See sections on the abuse potential and dependence profile of buprenorphine. The narcotic abuser may view buprenorphine ''safety'' as a good reason to select buprenorphine over another narcotic or to use greater amounts of buprenorphine without regard to possible overdose.

Comment: Scheduling under the CSA is a relative analysis and depends on aligning a drug with the closest set of comparators. Buprenorphine most closely resembles Schedule II narcotics.

Answer: Scheduling is a relative analysis. The effects produced by buprenorphine were compared to many Schedule II substances and found, under certain conditions, to be similar. However, buprenorphine is a partial agonist and shares some very important properties with other partial agonists in Schedule IV (*i.e.* pentazocine and butorphanol). These partial agonist properties play an important role when comparing buprenorphine effects with pure mu agonist effects. Continued use of all narcotic agonists results in tolerance development, dependence and possible addiction. For the narcotic abuser, escalation of dose, to achieve enhanced effects or to compensate for drug tolerance, will, at some point, be compromised with a partial agonist: the dose-response curve of buprenorphine is more shallow and less linear than mu agonists. This means that buprenorphine may not produce the enhanced effects sought by the chronic drug abuser. In addition, the current data indicates that buprenorphine produces moderate physical dependence and relatively high psychological dependence, not the severe dependence of Schedule II narcotics. Both the DHHS and the DEA have determined that the available data on buprenorphine regarding the abuse potential and dependence profile are most closely aligned to, or defined by, a Schedule III narcotic. For review, please see previous sections on abuse potential and dependence profile found herein.

Comment: Buprenorphine is a gateway drug compounding its public health risks.

Answer: Generally, substances like alcohol, nicotine and marijuana are universally accepted as gateway drugs because data shows that they are often the first drugs used by adolescents and a correlation exists between early experimental use of these substances and an escalation to serious drug abuse problems. One of the at-risk populations for buprenorphine abuse is naïve (inexperienced) opioid abusers (*see* section on abuse potential). Early experimentation with buprenorphine may lead to serious drug abuse problems.

Comment: The DEA has not been consistent in its decision making process and has failed to meet the ''non-arbitrary agency requirements.'' The finding that buprenorphine has a potential for abuse less than Schedule I or II substances is arbitrary and capricious and not supported by underlying administrative record.

Answer: The DEA has not been arbitrary or capricious in the decision making process regarding the abuse potential of buprenorphine. Buprenorphine has a very unique pharmacological profile and produces a range of opioid effects typical of both pure mu agonists and prototypical partial agonists depending on dose, pattern of use, and population taking this drug. Most single entity pure mu agonists are controlled in Schedule I or II of the CSA, while partial agonists, butorphanol and pentazocine, are controlled in Schedule IV. After reviewing all the relevant data, the DEA concluded that buprenorphine's abuse potential is most closely defined by Schedule III (*see* section on abuse potential and answers to previous comments).

Comment: One of the strongest signs that a drug has a high potential for abuse is evidence that it is abused through multiple routes of administration, and that it is used with other drugs of abuse. Among other things, this shows that drug abusers not only like the drug, they are trying to enhance its effects. DEA's finding on the abuse potential of buprenorphine failed to consider and give adequate weight to the evidence on this point.

Answer: The DEA did consider various pharmacological parameters relating to the use of buprenorphine by various routes of administration (*see* section on abuse potential). Drug abusers frequently abuse more than one drug. The reasons for this are varied. Abusers may be trying to enhance the effects of the drug they are using and/or trying to ameliorate some of the unwanted side effects. The DEA believes appropriate weight was placed on this issue.

Comment: DEA's conclusion that buprenorphine most closely resembles a Schedule III drug, with respect to physical and psychological dependence, is contrary to evidence.

Answer: This comment was followed by a number of citations that were taken from the buprenorphine scheduling review documents of both DEA and FDA (those reviews that were conducted prior to the proposal to place buprenorphine in Schedule III). These comments, for the most part, were taken out of context, interpreted differently or weighted differently than by DEA and/or FDA. For example, the statement that buprenorphine produces ''morphine-like physical dependence'' does not mean that morphine and buprenorphine have the same physical dependence capacity. It does mean that the physiological changes produced by buprenorphine and morphine are similar and they share similar withdrawal signs. The statement that ''under most conditions, buprenorphine's physiological and psychological effects are essentially the same as morphine or hydromorphone'' means that buprenorphine is capable of producing effects (*i.e.*, miosis, respiratory depression, analgesia, drug euphoria, drug liking and sedation) on a par with morphine and hydromorphone ''under most conditions''. A more appropriate caveat would be ''under many conditions''. This was a statement taken out of context and does not mean that these drugs produce the same dependence profile. It is important to note that, in making scheduling decisions, all the available information regarding a substance must be synthesized and weighed. The section on dependence profile found herein does not contain all the data DEA relied upon but does provide a summary of some important data and the rationale used by DEA in concluding that buprenorphine produces moderate physical dependence and relatively high psychological dependence.

Comment: In the absence of sufficient data on physical and psychological dependence, the DEA must give weight to its abuse liability assessment.

Answer: While some data was lacking regarding the dependence profile of long-term use/abuse of high dose buprenorphine, sufficient data is available for making a determination regarding buprenorphine dependence (*see* previous section on dependence profile). In addition, DEA did not find that buprenorphine has an abuse potential consistent with Schedule II.

Comment: Whether buprenorphine will be eligible for office-based use under recently enacted federal legislation is not a relevant factor in the scheduling analysis and DEA erred by considering it.

Answer: In the March 21, 2002, **Federal Register** notice on the proposed rule for buprenorphine scheduling, the DEA made the following statement under a section on consequences of this proposed rule: ''The DEA recognizes the need to expand narcotic treatment and this factor was a consideration in proposing Schedule III placement for buprenorphine.''

The proposed placement of buprenorphine in Schedule III was not made on the basis of making buprenorphine products available for office-based narcotic treatment. Taken out of context, we recognize that this statement could possibly lead to that interpretation. This statement was meant as a preamble to express DEA's concerns regarding the use of buprenorphine within the context of office-based narcotic treatment. The DEA does recognize the need to expand treatment. As part of our scheduling review, DEA did consider the impact of buprenorphine treatment products used within the context of office-based practice.

The factors for determining the placement of a substance within one of the schedules of controlled substances are specifically laid out in Title 21 U.S.C. 812(b). The manner in which a substance will be used and its availability to the public are among the elements that must be considered in determining a substance's actual or relative potential for abuse (*see* section on abuse potential). The DEA did not consider the need to expand narcotic treatment as a specific factor in determining the placement of buprenorphine under the CSA. Certainly the anticipated use of buprenorphine for addiction treatment was a point of consideration in terms of its possible impact on the relative potential for abuse, however, it was not a determining factor.

Comment: To the extent that DEA considered the placement of buprenorphine under Schedule III, in order to expand access to narcotic treatment (67 FR at 13115), DEA was required to do a complete analysis of the impact of its proposal under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Among other things, DEA was required to consider the impact of the decision on small businesses, including methadone treatment programs.

Answer: As stated previously, the DEA did not propose placement of

buprenorphine in Schedule III in order to have it available for office based treatment; it was DEA's analysis of the factors laid out in Section 811(c) that resulted in the determination that buprenorphine should be placed in Schedule III.

With respect to the issue of possible economic impact, DEA does not view the placement of buprenorphine into Schedule III as having a direct economic impact on the activities of traditional narcotic treatment programs. As a Schedule III controlled substance, buprenorphine will be equally available to traditional NTP programs as well as office-based treatment providers. The migration of stabilized patients from NTP's to office-based treatment programs will be driven more by the differences in the program requirements and characteristics. The office-based programs may be more attractive to the stabilized patients. As such, DEA stands by its certification that placement of buprenorphine in Schedule III will not have a significant economic impact on a substantial number of small business entities.

Comment: In its concluding statement (of the proposed rule), DEA notes that buprenorphine's abuse potential and dependence profile suggest that there may be significant abuse and diversion of the tablets in the United States. DEA therefore intends to initiate action to increase regulatory control, should that occur. This approach, however, is fundamentally at odds with the approach required under the CSA. The CSA requires DEA to make a reasonable predictive judgment about a drug, and to act proactively to address it. As Congress recognized, the risks associated with drug abuse are too great from a law enforcement and public health perspective to take a reactive posture.

Answer: Sublingual tablets of buprenorphine have not been available in the United States. Both the DEA and FDA relied heavily on foreign experience with these products and no country has marketed a high dose, naloxone-combination product. While drug abuse and addiction are universal problems, the availability of potent narcotic pharmaceuticals and high purity heroin in the United States will likely alter the types of abuse problems experienced with high dose buprenorphine tablets when/if they are approved for marketing. That is, one of the motivators involved in the abuse of buprenorphine in many countries has been the lack of affordable, high purity heroin and fewer, more restrictive controls placed on potent narcotic analgesics. At the same time, narcotic treatment under DATA will be a considerable departure from the more structured Narcotic Treatment Programs of the past decades. Should these products be approved, they will be prescribed by physicians, who may not have extensive experience in dealing with this patient population, and used by addicts, who are likely to abuse/divert their medications. This activity, under DATA, will occur in the absence of enforceable minimal standards of treatment. DEA believes that these conditions increase the likelihood of diversion and abuse of these products.

In light of these uncertainties and in consideration of all the data relevant to buprenorphine's abuse potential and dependence capacity, the DEA has concluded that Schedule III placement and the constraints placed on physicians under the Drug Addiction Treatment Act of 2000 (Pub. L. 106–310) will be sufficient to curb significant abuse problems. However, if our assessment is not correct, the DEA will take appropriate actions.

Comment: The DEA has not presented an adequate basis for the proposed rulemaking. Many of the studies cited by DEA and FDA are not described in sufficient detail. Moreover, some important information from these studies has not been considered by DEA.

Answer: The proposed rule outlines the basic facts. It provides a brief description about the action being proposed, describes buprenorphine as a derivative of thebaine, a partial agonist and its efficacy as an analgesic (with far greater potency than morphine). The two NDAs for buprenorphine products pending at FDA are mentioned with respect to being high-dose sublingual tablets intended for narcotic treatment. The notice outlines an FDA review as part of an NDA process for the proposed treatment drugs. Greater human experience and new scientific data prompted a scheduling review by FDA that resulted in a DHHS rescheduling recommendation. The DEA considered this recommendation and carefully reviewed the FDA scheduling review document (in matters of science and medicine, DHHS findings are binding on DEA). The DEA then conducted a final review and, outlined in the proposed notice, the factors DEA considered in making the decision to propose Schedule III for buprenorphine and all products containing buprenorphine. This was the basis for this proposed rulemaking. Upon request, the DEA did provide the FDA and DEA review documents to interested parties.

In this final rule, the DEA has included summaries of the data DEA relied upon in determining the abuse potential and dependence profile of buprenorphine. However, like most review documents, specific details about all the studies cannot be given. Citations, however, are provided.

This commentator stated that DEA's statements regarding buprenorphine's potency with respect to morphine and the fact that buprenorphine is a derivative of thebaine have no bearing on buprenorphine's abuse potential. As a derivative of thebaine, buprenorphine was originally classified under the CSA as a narcotic. This statement was not made to imply anything with respect to abuse potential. Many substances (*i.e.* opiate antagonists) are derived from thebaine and have no abuse potential. Potency, however, is an element that directly affects the abuse potential. As mentioned in an earlier comment, 1 mg/ml of buprenorphine produces substantial euphoria. If buprenorphine is marketed in 2 and 8 mg tablets, those tablets can be dissolved in water and shared by several opiate abusers (depending on level of narcotic tolerance). The implications of this activity speak directly to the abuse potential and the possible public health risks associated with shared injection equipment.

The DEA did review and consider the information in the literature cited, as well as countless other scientific papers, law enforcement and drug abuse data bases, and law enforcement documents that were not cited.

Comment: The proposed rule has not adequately described the pharmacology of the drug substance buprenorphine or the drug products that would be affected by this rule.

Answer: The section herein on abuse potential reviews the pharmacological profile of buprenorphine. Currently, only one buprenorphine product, Buprenex®, will be affected by this rule. This drug product is an injectable formulation containing 0.3 mg/ml of buprenorphine. It is approved for use for moderate to severe pain management.

Two New Drug Applications (NDA) have been submitted to FDA for high dose sublingual tablets. These potential addiction treatment products include: (1) Subutex®, a mono or single entity buprenorphine product, and (2) Suboxone®, a combination product in a 4:1 ratio of buprenorphine to naloxone. The Subutex® and Suboxone® NDAs remain pending at the FDA. When/if these products are approved for marketing they will also be affected by this rule.

Comment: Many facts cited by the DEA and FDA in their conclusions have been removed from their proper scientific context. This is particularly evident in the description of buprenorphine and in the basis for the DEA conclusion that buprenorphine may cause high psychological dependence.

Answer: Concluding statements rarely provide detail and, by their nature, are brief statements regarding conclusions that are made regarding all the available data. The section on buprenorphine's dependence profile herein and previous comments/answers regarding this issue, provide a detailed discussion of the basis for DEA's conclusions regarding dependence potential.

Comment: The DEA and FDA have not explained why data generated since the original scheduling action for buprenorphine in 1985 would alter the original conclusions that buprenorphine has a low potential for abuse and low potential for physical and psychological dependence.

Answer: The DEA has reviewed all the documents pertaining to the original placement of buprenorphine in Schedule V of the CSA. In 1981, buprenorphine hydrochloride (Buprenex®) was approved for use in the United States as an analgesic. In 1982, the Assistant Secretary of Health recommended that buprenorphine be placed in Schedule V of the CSA. This recommendation was based on findings that buprenorphine had an approved medical use in the United States and that its abuse potential and dependence capacity was low and consistent with Schedule V placement. The DEA published a proposal to place buprenorphine in Schedule V in 1982. This rulemaking was finalized on April 1, 1985 (50 FR 8104) following a hearing requested by Reckitt & Colman (now Reckitt Benckiser), the patent holder and manufacturer for buprenorphine worldwide. The company's objection to the proposal was based on their contention that buprenorphine did not have sufficient potential for abuse to warrant Schedule V placement in the CSA and that buprenorphine should not be classified as a narcotic as defined by the CSA. Data was provided from several countries including West Germany, Australia and New Zealand (where buprenorphine had been available for a limited period of time) showing buprenorphine abuse, diversion and trafficking. In addition, FDA provided testimony at the administrative hearing on buprenorphine regarding the basis for their decision to recommend Schedule V.

In reviewing this data, the science, at that time, relied heavily on preclinical studies that indicated that buprenorphine had minimal abuse potential and dependence producing capacity. While Jasinski's (1978) original clinical abuse liability study was available and considered, more weight was placed on the fact that buprenorphine's partial agonist activity mitigated the development of any serious abuse problems and the belief that this was an exceedingly safe drug in overdose. Clinical use in foreign countries, where it had already been approved for marketing, was limited but did indicate that buprenorphine had some abuse potential. However, as a low-dose, injectable formulation for the treatment of moderate to severe pain, widespread use and availability was not anticipated.

Since that time, the use, abuse and available data have increased. Clinical experience with various dosage forms for both pain management and addiction treatment is now available. In addition, the anticipated use of high-dose buprenorphine tablets with the possibility that they could be prescribed by physicians and used in an office based setting for the treatment of opioid addiction prompted FDA to re-evaluate the status of buprenorphine under the CSA. In reviewing all the available data, both FDA and DEA have concluded that placement in Schedule III as a narcotic is the most appropriate schedule for buprenorphine and products containing buprenorphine.

Comment: DEA and FDA rely heavily on data concerning abuse of buprenorphine in foreign countries that occurred prior to the international control of buprenorphine in 1989 under the 1971 Psychotropic Convention.

Answer: Both DEA and FDA reviewed all the available data that addressed the eight factors that are used as a basis for making a final scheduling decision. Published literature regarding the use, misuse, abuse, diversion and trafficking in buprenorphine was gathered and assessed. Published data about the abuse of any drug often provides a wealth of information including: who is abusing it, how it is being abused, source of the drug and possible street prices, extent or seriousness of the abuse, drug effects, concurrent use of other drugs, and reasons it is sought and abused. Much of this information is timeless and speaks to the ability of a drug to produce certain effects that some humans find pleasurable. Both DEA and FDA considered buprenorphine abuse data within the context of regulatory controls, heroin availability and purity, and availability and use of other pharmaceutical narcotics.

Comment: The DEA and FDA have inadequately described the conditions of use of Subutex® in France and the impact of such use on either the mortality associated with heroin addiction or the frequency of abuse of buprenorphine. It is asserted without supporting data that the conditions of use that will apply to Suboxone® and Subutex®, should they be approved for use in the United States, will inevitably lead to significant abuse of buprenorphine. There is no discussion of how the proposed use of Subutex® in the United States may differ from the use of this product in France. There is not an acknowledgment in the proposed rule that one of the products under development, which is not available in France, contains naloxone to deter intravenous abuse.

Answer: Buprenorphine was first marketed in France in 1987 as a low dose sublingual tablet (Arditti *et al.*, 1992). Between 1992 and 1993, buprenorphine was identified as the third most commonly appearing drug in falsified prescriptions in southwestern France (Baumevielle *et al.*, 1997). In December 1992, the French government instituted special dispensing and prescribing procedures similar to those governing narcotic drugs: buprenorphine was monitored by the French Medical Association; prescriptions were required to be written on a voucher taken from a counterfoil prescription book that was specifically designed for narcotic drugs; and prescriptions could be filled by any pharmacy, but had to be retained by the pharmacist for three years.

In 1996, general practitioners were permitted to prescribe buprenorphine sublingual tablets (Subutex®, 2 and 8 mg) for treating opiate dependence for up to 28 days per prescription. This system of treatment is a considerable departure from previous policy. Prior to 1996, France provided very limited treatment with methadone in state-run clinics (on a per capita basis, France had the lowest narcotic treatment of any European country). The spread of HIV and other communicable diseases by intravenous drug users and the acceptance of various types of narcotic replacement treatment in other countries (methadone, morphine, heroin and low-dose buprenorphine), combined with data suggesting that high-dose buprenorphine was a safer treatment drug, set the stage for France's new policy. When Subutex® was first launched, the street price of an 8 mg sublingual tablet was 100 francs (Auriacombe *et al.*, 1997). More recently

(Dru, 1999), the street price for buprenorphine in Paris was 10 to 15 francs and was reported as being easily accessible on the illicit market. This reduction in street pricing for buprenorphine is likely the result of widespread availability, by licit and illicit means. Because of continuing reports of abuse and diversion, in September 1999, restrictions on dispensing of buprenorphine were tightened to a 7-day supply per prescription.

Information regarding the use of Subutex® in France comes from a variety of sources. One of the first and most comprehensive reports was generated by a multidisciplinary task force (working under an agreement with the Office of the Junior Minister for Health, the General Health Administration and Schering Plough Laboratories) and reported on the early use of Subutex® in France. Data presented in the report suggested that trafficking in heroin and heroin overdose deaths significantly declined in France since Subutex® became available (an estimated 75 percent reduction). However, data also showed that Subutex® use is associated with significant public health risks. The following points were made by the task force:

- The use of benzodiazepines in combination with buprenorphine products is frequently encountered (both self-reports of addicts and studies have verified the frequency of this combination: about 20 to 44 percent of addicts treated with Subutex® also administer benzodiazepines). From February 1996 to October 1997, health officials were aware of 17 deaths associated with this combination.
- Sales of syringes remained stable despite the large numbers of individuals in treatment with Subutex® (50,000 buprenorphine-treated patients in 1997). Addicts reported that they continue to inject, often crushing, dissolving and injecting their buprenorphine tablets as well as other drugs of abuse.
- Survey data indicated that general practitioners were unable to obtain psychological services for their patients, as few psychiatrists want to treat intravenous drug users (less than 1 percent of the psychiatrists were linked to addiction treatment or had experience in treating addiction).
- Subutex® was diverted and abused by a significant percentage of individuals receiving buprenorphine prescriptions: 12 to 31 percent injected their own medication and 2 to 9 percent received multiple prescriptions from 2 or more physicians.
- Young abusers, not yet addicted to narcotics, were using buprenorphine as a ''gateway'' drug (the degree to which this occurs was unknown).

Recent data regarding Subutex® use in France is provided by Thirion *et al.* (2002), who conducted an analysis of 11,186 buprenorphine prescriptions (written between September through December 1999) to determine how buprenorphine was being used by French practitioners. Eighty five percent of the buprenorphine prescriptions were written by general practitioners who often prescribed for only one or two patients. The mean dose was 11.5 mg/day. Twelve percent of the patients received prescriptions from more than two prescribers and 43 percent of the maintained patients had an associated benzodiazepine prescription, often on the same prescription form. Sixty one percent of the patients had regular follow-up, 21 percent had occasional consultations and 18 percent had deviant maintenance treatment (more than two prescribers or more than 20 mg per day of buprenorphine). The authors concluded that the easy access to maintenance treatment in France is associated with a high risk of buprenorphine abuse.

A number of studies have examined buprenorphine-related deaths in France. In a compilation of the case reports and analysis involving buprenorphine overdoses (29 non-fatal and 20 fatal occurring between February 1996 and October 1997 at the hospitals and forensic laboratories in Strasbourg, France), Tracqui and colleagues (1998) speculated that the high dosage of Subutex® tablets is likely to play a role in the occurrence of accidents in spite of the theoretical ''ceiling effect.'' However, almost all cases involved diverted medication and the use of other psychoactive drugs, especially benzodiazepines. Intravenous injection of the crushed tablet also appears to be a risk factor and was associated with 8 deaths and 10 non-fatal overdoses.

Kintz (2001) reported an additional 117 deaths involving buprenorphine. These fatalities were observed at the Institute of Legal Medicine of Strasbourg from March 1998—July 2000 (39 cases) and at 13 other French forensic centers from mid 1996—March 2000 (78 cases). Eighty two percent of the cases involved males. Needle marks suggesting recent intravenous injection(s) were observed in about half of the subjects. All but one case involved concomitant intake of other psychotropic substances. Benzodiazepines were most commonly found in combination with buprenorphine (91 cases). The author concluded that intravenous injection, concomitant use of CNS depressants (especially benzodiazepines) and high-dose buprenorphine formulation were risk factors in buprenorphine-associated fatalities. He further concluded that the total number of buprenorphine-related deaths in France is probably underestimated due to: (1) The drug is difficult to analyze (low concentration and no readily available immunoassay in France); (2) only some forensic centers responded to the question of fatalities involving buprenorphine; and (3) in numerous cases, an obvious overdose (known drug addict, presence of syringe or packages of Subutex®), no autopsy is requested by the police or a judge.

If approved for use in the United States, the prescription of Subutex® or Suboxone® in an office based setting will be a significant departure from years of regulated narcotic treatment practice. While physicians who want to prescribe these drugs for narcotic treatment must be certified by CSAT and can only treat up to 30 opiate-dependent patients at any given time, other regulatory requirements are less restrictive than those in France.

The above data show a pattern of increased regulatory control measures as a consequence of increasing levels of diversion and abuse. Injection of the Subutex® tablets is a common practice among treatment clients and prescription data indicates that they are also using benzodiazepines. Addiction is a medical disease associated with predictive behaviors that transcend national boundaries. Even in the best treatment programs, recurrent relapse occurs. As stated previously, providing prescriptions of narcotic substances to known drug abusers for the treatment of opiate dependence, in the absence of any enforceable treatment standards, is likely to be related with the diversion and abuse of these medications.

Comment: The additional controls that would be provided by moving buprenorphine to Schedule III are not described and no rationale is provided for the assertion that the Drug Addiction Treatment Act will not provide adequate safeguards for the public health.

Answer: The regulatory controls for those who handle Schedule III narcotics are described later in this final rule. There are some additional regulatory requirements beyond what is required of Schedule V narcotics: prescription refills are limited to 5 refills in 6 months, a permit is required to export this drug, and both manufacturers and distributors must file reports with the DEA. For individuals involved in illicit

activities, trafficking penalties and fines are significantly increased.

The Drug Addiction Treatment Act (DATA) does not have an impact on DEA's scheduling responsibilities under the CSA. The scheduling criteria and procedures remain unchanged and continue to dictate the requirements for the scheduling of buprenorphine as well as any other controlled substance.

Comment: The overwhelming scientific and medical evidence demonstrates that buprenorphine should not be rescheduled. If buprenorphine is rescheduled, it should not be placed any higher than Schedule IV.

Answer: Both the DEA and the DHHS have determined that the preponderance of evidence indicates that buprenorphine has an abuse potential and dependence profile consistent with Schedule III of the CSA. The sections on abuse potential and dependence profile and answers to previous comments address this issue.

Conclusion

Relying on the scientific and medical evaluation and scheduling recommendation of the DHHS in accordance with Section 201(b) of the Act (21 U.S.C. 811 (b)), and after a careful consideration of all comments and a final, independent review by the DEA, the Deputy Administrator finds that:

1. Buprenorphine has a potential for abuse less than the drugs or other substances in Schedule I and II.
2. Buprenorphine has a currently accepted medical use in treatment in the United States.
3. Abuse of buprenorphine may lead to moderate or low physical dependence or high psychological dependence

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Regulatory Requirements

Persons who manufacture, distribute, dispense, import, export, store or engage in research with buprenorphine must comply with the following regulatory requirements:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports buprenorphine or engages in research or conducts instructional activities or chemical analysis with respect to this substance must be registered to conduct such activities in accordance with 21 CFR part 1301. Those individuals who are currently registered to handle buprenorphine in Schedule V may continue activities under that registration until approved or denied registration in Schedule III provided such registrant has filed an application for registration in Schedule III with DEA on or before November 6, 2002. Any persons not currently registered and proposing to engage in such activities may not conduct activities with the substance until properly registered in Schedule III.

2. *Security.* Buprenorphine must be manufactured, distributed and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76.

3. *Labeling and packaging.* Products manufactured, distributed or dispensed before October 7, 2002 and labeled as Schedule V may be distributed and dispensed until April 7, 2002. Products manufactured, distributed or dispensed after October 7, 2002 shall comply with the requirement of 21 CFR 1302.03–1302.07.

4. *Inventory.* Registrants possessing buprenorphine are required to take inventories pursuant to 21 CFR 1304.03, 1304.04 and 1304.11.

5. *Records and reports.* All registrants must keep records and provide reports pursuant to 21 CFR 1304.03, 1304.04, 1304.21–1304.25 and 1304.33.

6. *Prescriptions.* All prescriptions for buprenorphine or prescriptions for products containing buprenorphine are to be issued pursuant to 21 CFR 1306.03–1306.07 and 1306.21–1306.26.

7. *Importation and Exportation.* All importation and exportation of buprenorphine shall be in compliance with 21 CFR part 1312.

8. *Criminal Liability.* Any activity with buprenorphine not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act or the Narcotic Addict Treatment Act of 2000, shall continue to be unlawful on or after October 7, 2002, except as authorized in this rule.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 605(b)). It will not have a significant economic impact on a substantial number of small business entities. Buprenorphine is already controlled under the CSA. Individuals who are currently engaged in activities with buprenorphine are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action

is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The Deputy Administrator certifies that this proposed rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget. Buprenorphine is already controlled under the CSA. Individuals who are currently engaged in activities with buprenorphine are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12988

This proposed regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This proposed rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (21 CFR 0.100),and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1.The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.13 is amended by revising paragraph (e) to read as follows:

§ 1308.13 Schedule III.

* * * * *

(e) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium 9803
(ii) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9804
(iii) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium 9805
(iv) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts 9806
(v) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts 9807
(vi) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9808
(vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9809
(viii) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9810

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(i) Buprenorphine 9064

(ii) [Reserved.]

* * * * *

3. Section 1308.15(b) is revised to read as follows:

§ 1308.15 Schedule V.

* * * * *

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) [Reserved]

* * * * *

Dated: October 1, 2002.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 02–25293 Filed 10–4–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 450

[FHWA Docket No. FHWA–2001–10886]

RIN 2125–AE92

Metropolitan Transportation Planning and Programming

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA, jointly with the Federal Transit Administration (FTA), amends its regulation on Planning and Assistance Standards that govern the development of transportation plans and programs for urbanized (metropolitan) areas. The FTA has codified the FHWA regulations for Metropolitan Transportation Planning and Programming into their regulations at 49 CFR 613 and joins the FHWA in making this change. This change provides the New York City metropolitan area additional time to review and update its transportation plan by waiving the regulatory requirement for a triennial plan update for the New York City metropolitan area for up to three years, until September 30, 2005. This action is necessary because the New York Metropolitan Transportation Council's (NYMTC) offices were destroyed by the terrorist attacks that occurred on September 11, 2001, and without this waiver, Federal highway and transit funding could be disrupted after September 30, 2002, when the current plan is set to expire. Furthermore, Congress recently enacted and the President signed HR 3880 that clearly expresses its intent to provide the New York City metropolitan area with relief from certain transportation conformity and metropolitan transportation planning requirements until September 30, 2005.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. John Humeston, Metropolitan Planning and Policies Team (HEPM), (404) 562–3667 (metropolitan planning), 60 Forsyth Street, Suite 8M5; Atlanta, Georgia 30303–3104; or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371; 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

The Clean Air Act of 1970 (CAA) (44 U.S.C. 7401 *et seq.*) requires each State to develop a State Implementation Plan (SIP) that indicates how areas that are not meeting air quality standards intend to meet those standards. The Environmental Protection Agency (EPA) reviews and approves all SIPs. The SIP must specify emission limitations and other measures necessary to attain and maintain the national air quality levels for each pollutant.

In 1977, the Congress amended the CAA to prohibit Federal agencies from engaging in, supporting in any way, or providing financial assistance for any transportation activity that does not conform to the applicable SIP, including Federal or federally assisted transportation projects (Public Law 95–95; 91 Stat. 749). The Congress wanted to ensure that any Federal funding and approval for transportation plans, programs, and projects would be consistent with measures and goals of the SIP. In 1990, the Congress further amended the CAA by integrating it with the transportation planning process and conditioning Federal approval and funding of transportation activities on their demonstrated conformity with the applicable SIP.

The entity responsible for developing transportation plans and programs for urbanized areas of a State is the Metropolitan Planning Organization (MPO). Section 134(g) of title 23, U.S. Code, requires each MPO to prepare and update periodically a long-range transportation plan for its metropolitan area. The MPO must coordinate the development of this long-range plan with the SIP in all metropolitan areas that are nonattainment or maintenance areas for ozone, carbon monoxide, or particulate matter under the CAA (23 U.S.C. 134(g)(3)). These statutory mandates for MPOs have been codified in the FHWA regulations for Metropolitan Transportation Planning and Programming at 23 CFR 450 subpart C. Additionally, the Federal Transit Administration (FTA) adopts these regulations at 49 CFR 613 subpart A where the FTA cross-references and incorporates by reference the FHWA regulations. The FTA concurs with the changes made by this final rule to 23 CFR 450.322(a).

Section 134(g) states that the transportation plan shall be reviewed and updated periodically, according to a schedule that the Secretary of Transportation (hereinafter Secretary) determines to be appropriate. The Secretary, through the Federal Highway Administrator, has outlined the schedule for reviewing and approving the MPO's transportation plans in 23 CFR 450.322(a). The transportation plan has a 20-year horizon and must be reviewed and updated at least triennially in any nonattainment and maintenance areas (23 CFR 450.322(a)).

The New York City metropolitan area includes an urbanized area for the purposes of section 134 and has been designated as a nonattainment area for the purposes of the CAA. The MPO responsible for the New York City metropolitan area is the New York Metropolitan Transportation Council (NYMTC). The NYMTC last reviewed and updated its transportation plan on September 30, 1999, and without this proposed amendment would be required to again review and update the plan by September 30, 2002. Unfortunately, the NYMTC occupied offices in the World Trade Center in Manhattan and their offices were destroyed by the terrorist attacks on the World Trade Center buildings on September 11, 2001. Therefore, it will be impossible for NYMTC to update its transportation plan by September 30, 2002, as required by 23 CFR 450.322(a). This could disrupt Federal highway and transit funding after that date.

In addition to the long-range plan, the MPO must develop a transportation improvement program (TIP) for the area (23 U.S.C. 134(h)(1)(A)). The TIP must be updated every two years and approved by the MPO and the Governor (23 U.S.C. 134(h)(1)(D)). The New York metropolitan area last updated their TIP on November 1, 2001.

Recently, the President signed into law HR 3880 in order to provide NYMTC additional time to review and update its TIP, and prepare conformity determinations, by providing relief from certain transportation conformity and metropolitan transportation planning requirements until September 30, 2005. HR 3880 exempts the New York City area's current TIP and plan from the Clean Air Act's conformity requirements until September 30, 2005. The intent is to provide NYMTC additional time to organize and become operational again in order to work on a new plan and TIP in the aftermath of the September 11, 2001, terrorist attacks on that area.

For the same reasons, the FHWA, in conjunction with the FTA, amends its regulation on Planning and Assistance Standards, which governs the development of transportation plans and programs for urbanized (metropolitan) areas, to provide New York City metropolitan area additional time to review and update its transportation plan. In urbanized nonattainment areas, such as the New York City area, the transportation plan is required to be ''revised and updated at least triennially * * *'' 23 CFR 450.322(a). The transportation plan for

the New York City metropolitan area was last updated on September 30, 1999. The recently enacted HR 3880 that provides NYMTC a temporary waiver from certain statutory and regulatory transportation conformity and metropolitan transportation planning requirements is a clear indication of Congressional intent that the New York city metropolitan area be given relief from the closely related regulatory requirement for updates of the plan, codified in 23 CFR 450.322(a).

Consequently, the FHWA hereby amends the regulation on Planning and Assistance Standards, that governs the development of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs, to provide the New York City metropolitan area additional time to review and update its transportation plan. This action waives the regulatory requirement for a triennial plan update for the New York metropolitan area for up to three years, until September 30, 2005, consistent with the date set by the Congress. Since the Congress expressed its intent to provide the NYMTC additional time to review and update its TIP, it is consistent for the FHWA to amend its regulations to support the congressional action to provide relief for NYMTC.

Rulemaking Analyses and Notices

In accordance with section 553(b)(3)(B) of the Administrative Procedure Act, the FHWA believes that good cause exists to waive prior notice and opportunity for public comment as it is impracticable and contrary to the public interest. The Congress has clearly expressed its intent that the NYMTC should be afforded additional time to review and update their plan and TIP by enacting HR 3880. It is unnecessary to provide prior notice and opportunity for public comment for this regulatory change that is consistent with and implements the intent of Congress. Furthermore, prior notice and opportunity for public comment is impracticable because the current plan is set to expire on September 30, 2002, which does not provide sufficient time to obtain public comment on this action. The NYMTC occupied office space in the World Trade Towers that were destroyed in the terrorist attack of September 11, 2001, and it is impossible for the NYMTC to review and update its transportation plan by September 30, 2002. If NYMTC does not have a new plan or a waiver from the requirement to have a new plan on that date, then transportation projects may not advance. Therefore, with the imminent expiration of the current plan and the clear Congressional intent to provide a temporary waiver to the New York City metropolitan area from certain transportation conformity and metropolitan planning requirements, the FHWA believes good cause exists to waive prior notice and opportunity for comment.

For the reasons stated above, the FHWA believes good cause exits to waive prior notice and opportunity for comment. Additionally, in accordance with section 553(d)(3) of the APA, the FHWA believes that good cause exists to make this rule effective upon publication in the **Federal Register**. Without the relief granted by this action, the New York City metropolitan area would not be able to advance any transportation projects after their current plan expires on September 30, 2002, unless and until the NYMTC is able to review and update their plan or a waiver from this requirement. Since the NYMTC occupied office space in the World Trade Center that was completely destroyed on September 11, 2002, it will be impossible for the NYMTC to create a new transportation plan in that time under the current circumstances. Therefore, it is necessary to amend our regulation to provide the necessary relief contemplated by Congress as soon as possible.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies

We have determined that this rulemaking is not a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures. This action is intended to reduce current regulatory burdens on the NYMTC for a temporary time period. In preparing this action, the FHWA has sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations and utilize already existing processes to accomplish any new tasks or activities.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities, such as, local governments and businesses. We believe that the flexibility available to States and MPOs in responding to requirements has been maintained, if not enhanced, in this proposal. Accordingly, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

This action has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178; 112 Stat. 107) and its predecessors authorize the Secretary to implement the provisions for metropolitan and statewide planning. We believe that policies in these proposed rules are consistent with the principles, criteria and requirements of the Federalism Executive Order and the TEA–21.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway planning and Construction; 20.500, Federal Transit Capital Improvement Grants, 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations.

The reporting requirements for statewide transportation plans and programs are approved under OMB control number 2132–0529. The information collection requirements addressed under the current OMB approval number (2132–0529) impose a total burden of 241,850 hours on the planning agencies that must comply with the requirements in the existing regulation.

National Environmental Policy Act

We have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). It is our determination this action is consistent with the provisions of 23 CFR 771.117(c)(20) which deems the issuance of regulations of this nature to

meet the requirements for a Categorical Exclusion.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. (2 U.S.C. 1531 *et seq.*)

The requirements of 23 U.S.C. 134 and 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of twenty percent of the total project cost. The FHWA and the FTA believe that the costs of complying with these requirements are predominantly covered by the funds they administer.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (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.

Executive Order 13211 (Energy Effects)

We have analyzed this final 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. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of every year. The RINs contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 450

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

Issued on: October 2, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, by amending part 450 as set forth below:

PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 continues to read as follows:

Authority: 23 U.S.C. 134, 135, 217(g), 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5306; 49 CFR 1.48(b) and 1.51.

2. Revise § 450.322(a) to read as follows:

§ 450.322 Metropolitan transportation planning process: Transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty-year planning horizon. The plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated intermodal transportation system that facilitates the efficient movement of people and goods. The transportation plan shall be reviewed and updated at least triennially in nonattainment and maintenance areas and at least every five years in attainment areas to conform its validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period, except that the transportation plan for the New York Metropolitan Transportation Council that was reviewed and updated on September 30, 1999, shall be reviewed and updated no later than September 30, 2005. The transportation plan must be approved by the MPO.

* * * * *

[FR Doc. 02–25515 Filed 10–3–02; 11:54 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–114]

RIN 2115–AA97

Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around high capacity passenger vessels, including international ferries, located in the Portland, Maine, Captain of the Port zone. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels are prohibited from entering these security zones without permission of the Captain of the Port, Portland, Maine.

DATES: This rule is effective from September 25, 2002, until December 1, 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 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

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

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 an NPRM. Due to the warnings given by national security and intelligence officials that there is an

increased risk that further subversive or terrorist activity may be launched against the United States, the Homeland Security Advisory System level was upgraded to ''high'' and the Maritime Security (MARSEC) Level was raised to Level II indicating a heightened threat. As a result, a heightened level of security has been established around all passenger vessels in the Portland, Maine, Captain of the Port zone. These security zones are needed to protect passenger vessels, persons aboard passenger vessels, the public, waterways, ports and adjacent facilities from sabotage or other subversive acts, accidents, or other events of a similar nature taken upon passenger vessels in the Portland, Maine, Captain of the Port zone.

Passenger vessels have already begun their seasonal arrivals in the Portland, Maine, Captain of the Port zone. Any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within, and adjacent to, passenger vessels vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to passenger vessels. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area.

For the reasons stated in the paragraphs above, under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures (airplanes, the World Trade Center in New York and the Pentagon in Arlington, Virginia) killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials.

Due to these warnings, on September 10, 2002 the Homeland Security Advisory System level was upgraded to ''high'' and the Maritime Security (MARSEC) Level was raised to Level II indicating a heightened threat. As a result, a heightened level of security has been established around all passenger vessels in the Portland, Maine, Captain of the Port zone. In addition, the increased tensions in the Middle East have made it prudent for select facilities and vessels to be on a higher state of alert because terrorist organizations have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

These heightened security concerns, together with the catastrophic impact that a terrorist attack against a passenger vessel would have to the public interest, make these security zones prudent on the navigable waterways of the United States. Vessels operating near passenger vessels present possible platforms from which individuals may gain unauthorized access to these vessels or launch terrorist attacks upon these vessels. As a result, the Coast Guard is taking measures to prevent vessels or persons from accessing the navigable waters close to passenger vessels in the Portland, Maine, Captain of the Port zone.

Discussion of Rule

This regulation establishes temporary security zones that will be in effect in the navigable waters within a 100-yard radius around any passenger vessel that is moored, or in the process of mooring, at any berth or anchored within the Portland, Maine, Captain of the Port zone. While underway, the security zone will be 100 yards on each side and astern of the passenger vessel and 200 yards ahead which is needed due to the passenger vessel's speed of advance through the water. To clarify which types of passenger vessels this rule applies to, we have adopted a modified version of the definition in 33 CFR 120.100 for this rule by removing the requirement for ''making voyages lasting more than 24 hours'' and by increasing the requirement for number of passengers from ''authorized to carry more than 12 passengers for hire'' to ''authorized to carry more than 500 passengers for hire''. This change allows for including high capacity cruise ships and international ferries under the definition while excluding smaller vessels.

These security zones are needed to protect passenger vessels, persons aboard passenger vessels, the public, waterways, ports and adjacent facilities from sabotage or other subversive acts, accidents, or other events of a similar nature taken upon passenger vessels in the Portland, Maine, Captain of the Port zone. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation. To the extent that each is applicable, this regulation is issued under the authority contained in 33 U.S.C. 1226 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; and 49 CFR 1.46.

Any violation of the security zones described herein is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel and license sanctions.

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). These zones will encompass a small portion of the waterway for a limited period of time. There is ample room for vessels to navigate around the security zones and delays, if any, are expected to be minimal. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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.

For the same reasons stated in the Regulatory Evaluation section above, 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.

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 this rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or operations for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–114 to read as follows:

§ 165.T01–114 Security Zones; Passenger Vessels, Portland, Maine, Captain of the Port Zone.

(a) *Definition.* ''Passenger vessel'' as used in this section means a passenger vessel over 100 gross tons, authorized to carry more than 500 passengers for hire; making voyages of which any part is on the high seas; and for which passengers are embarked or disembarked in the Portland, Maine, Captain of the Port zone as defined in 33 CFR 3.05–15.

(b) *Location.* The following areas are security zones:

(1) All navigable waters within a 100-yard radius around any passenger vessel that is moored, or in the process of mooring, at any berth or anchored within the Portland, Maine, Captain of the Port zone.

(2) All navigable waters of the Portland, Maine, Captain of the Port zone 200-yards ahead, and 100-yards on each side and astern of any passenger vessel that is underway.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port, Portland, Maine (COTP) or his designated representative. These security zones will not preclude the routine loading and unloading of passengers, vehicles or cargo; or movement of authorized employees and support personnel at any facility or aboard any passenger vessel.

(2) All persons and vessels must comply with the instructions of the COTP or the designated on-scene 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, and local, state and federal law enforcement vessels. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(3) No person may swim upon or below the surface of the water within the boundaries of these security zones unless previously authorized by the COTP or his designated representative.

(d) *Effective period.* This section is effective from September 25, 2002, through December 1, 2002.

Dated: September 25, 2002.

W.W. Briggs,

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

[FR Doc. 02–25405 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 187–0365a; FRL–7385–3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns the emission of volatile organic compounds (VOC) from wastewater systems. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comments by November 6, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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.

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

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington DC 20460

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

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

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

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?

Table 1 lists the rule we are approving with the date that it was amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule No.	Rule Title	Amended	Submitted
SCAQMD	1176	VOC Emissions from Wastewater Systems	09/13/96	11/26/96

On February 12, 1997, this 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?

We approved into the SIP on August 25, 1994 (59 FR 43751) a version of SCAQMD Rule 1176, originally adopted on November 3, 1989.

C. What Are the Changes in the Submitted Rule?

Rule 1176 changes for refineries are as follows:

- Refineries will be required to either control with monitoring repeat-emitting drain system components (DSC) to 500 ppm VOC or install controls on all DSCs with less monitoring.
- New process drains are required to have DSC controls.
- Monitoring frequencies are decreased for low-emitting and non-emitting DSCs.

Other Rule 1176 changes for all facilities are as follows:

- Bulk loading terminals are excluded.
- Separator forebays, clarifiers, and tanks are included.
- Schematic identification is required for some facilities for certain components with an accompanying list of all DSCs.
- The 500 ppm VOC limit applies to the entire wastewater system, and no openings are allowed in manhole covers.
- A requirement for the inspector to be certified is added.
- Requirements for recordkeeping and reporting are added.
- Certain exemptions are allowed for sources that would emit little or no VOCs.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), must not interfere with applicable requirements including requirements concerning attainment (see section 110(l)), and must not relax existing requirements in effect prior to enactment of the 1990 CAA amendments (see section 193). The SCAQMD regulates an extreme ozone nonattainment area. 40 CFR 81.305. Therefore Rule 1176 must fulfill RACT requirements.

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

• *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.

• *Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations* (the ''Blue Book''), U.S. EPA, OAQPS (May 25, 1988).

• *Control of Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds*, EPA–450/2–77–025 (October 1977).

B. Does the Rule Meet the Evaluation Criteria?

We believe the rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACT. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 6, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 6, 2002. This will incorporate the rule into the federally-enforceable SIP.

III. Background Information

A. Why Was This Rule 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, 1988	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. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

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

This rule also does not have 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This 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 CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. 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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(242)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(242) * * *

(i) * * *

(B) * * *

(*2*) Rule 1176, adopted on November 3, 1989 and amended on September 13, 1996.

* * * * *

[FR Doc. 02–25299 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 054—6022a; FRL–7381–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). This revision establishes ambient air quality standards for nitrogen dioxide, equivalent to the national primary and secondary ambient air quality standards established by EPA. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *Lewis.Janice@epa.gov*. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish ambient air quality standards for nitrogen dioxide. The revision consists of the adoption of revisions to Regulation 45CSR12—Ambient Air Quality Standards for Nitrogen Dioxide.

I. Background

A. Summary of the SIP Revision

This revision restructures and reorganizes Regulation 45CSR12, governing the ambient air quality standards for nitrogen dioxide. The revision also updates reference test methods for measuring nitrogen dioxide concentrations in the ambient air.

B. EPA's Evaluation of the SIP Revision

The EPA has determined that this revision to 45CSR12—Ambient Air Quality Standards for Nitrogen Dioxide meets all federal criteria for approval.

II. Final Action

EPA is approving West Virginia's Rule 45CSR12, submitted as a SIP revision on September 21, 2000, into the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''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 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.*).

B. 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 the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's ambient air quality standards for nitrogen dioxide does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(49) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(49) Revisions to West Virginia Rule 45CSR12 submitted on September 21, 2000, by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Division of Environmental Protection transmitting Regulation 45CSR12—Ambient Air Quality Standard for Nitrogen Dioxide.

(B) Revised Regulation 45CSR12, effective on June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(49)(i) of this section.

[FR Doc. 02–25294 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV048–6020a; FRL–7381–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia, Regulation To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The SIP revision is a regulation to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas in West Virginia. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on December 6, 2002 without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia

Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000, West Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision is a regulation (45CSR5) to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas in West Virginia.

There are two revisions of 45CSR5 that bring all the of the West Virginia Office of Air Quality coal related rules into one rule. The first revisions of 45CSR5, that set standards for particulate matter weight and visible emissions from coal preparation plants and coal handling operations, went to public hearing on August 12, 1994 and became effective May 1, 1995. The rule also established monitoring, recordkeeping, and reporting requirements and requires that each owner/operator obtain an annual operating permit from the West Virginia Office of Air Quality without which the plant cannot be operated.

The second revisions are to streamline the requirements of 45CSR5 and to incorporate the requirements for coal refuse sites that went to public hearing on July 19, 1999 and became effective August 31, 2000.

Summary of SIP Revision

(A) Revisions to modify the definitions of the following: (1) Handling operation—to entail similar activities at facilities less than 200 tons of coal per day, (2) coal preparation plants—to conform to the New Source Performance Standards (NSPS) definition in Subpart Y of 40 CFR part 60, and (3) fugitive dust and fugitive dust control system—to clarify that water or chemical suppression are recognized as emission control measures.

(B) Revisions to incorporate the requirements for coal refuse sites: (1) Definitions of coal refuse, coal refuse disposal area, coal refuse pile, and operation of a coal refuse disposal area, (2) standards for coal refuse disposal areas, and (3) burning coal refuse disposal areas.

(C) Revisions to the operating permit requirements to apply only to coal preparation plants. The revised rule provides that coal preparation plants requiring a Title V operating permit would only have to obtain the Title V permit. For owners or operators of a coal preparation plant and for coal handling operations that choose a general permit under 45CSR13, would only be required to submit the required registration and obtain coverage under the general permit.

(D) Revisions to clarify thermal dryers constructed or modified after October 24, 1974 are subject to the NSPS under 40 CFR part 60.

(E) Revisions to clarify that 45CSR17 (fugitive particulate matter emission requirements) is not applicable to 45CSR5 sources.

(F) Revisions correcting Code citations and modifying definitions to conform 45CSR5 to the 1994 statutory changes which incorporated the West Virginia Office of Air Quality into the West Virginia Division of Environmental Protection, Bureau of Environment.

(G) Revisions to clarify that continuous opacity monitoring data may be used to determine opacity violations or compliance not withstanding Method 9 of 40 CFR part 60, Appendix A.

These revisions strengthen the SIP by providing control strategies of coal plants, and are consistent with the NSPS requirements. The structure of the rule is also consistent with the West Virginia organization.

II. Final Action

EPA is approving the revisions of 45CSR5, ''To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposable Areas,'' submitted by West Virginia Division of Environmental Protection on September 21, 2000. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Administrative Requirements

A. General Requirements

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

subject to Executive Order 13045 ''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 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.*).

B. 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 the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas in West Virginia, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(47) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(47) Revisions toWest Virginia Regulations to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas.

(B) Revisions to Title 45, Series 5, 45CSR5, To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of November 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting materials related to revisions of 45CSR5.

(B) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(47)(i) of this section.

[FR Doc. 02–25291 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV052–6023a; FRL–7388–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Carbon Monoxide and Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). This revision establishes reference test methods for measuring carbon monoxide concentrations in the ambient air, equivalent to the national primary and secondary ambient air quality standards established by EPA. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on December 6, 2002 without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, or by e-mail at *Lewis.Janice@epa.gov.* Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish reference test methods for measuring ambient air concentrations for carbon monoxide.

The revision consists of the adoption of revisions to Rule 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone.

A. Summary of the SIP Revision

This revision restructures and reorganizes Regulation 45CSR9, governing the ambient air quality standards for carbon monoxide. The revision also establishes reference test methods for measuring carbon monoxide concentrations in the ambient air. The West Virginia Division of Environmental Protection has reserved sections in Regulation 45CSR9 to address ozone ambient air concentrations and reference test methods. Since the recent ligation of the Federal 8-hour ozone standard, West Virginia will be adopting the 8-hour ozone standard in the future.

B. EPA's Evaluation of the SIP Revision

The EPA has determined that this revision to 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone, for the purpose of establishing reference test methods for measuring ambient air concentrations for carbon monoxide meet all Federal criteria for approval.

II. Final Action

EPA is approving West Virginia's Rule 45CSR9, submitted as a SIP revision on September 21, 2000, into the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''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 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.*).

B. 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 the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's reference test methods for measuring ambient air concentrations for carbon monoxide does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(50) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(50) Revision to West Virginia Rule 45CSR9 submitted on September 21, 2000, by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Division of Environmental Protection transmitting Regulation 45CSR9—Ambient Air Quality Standard for Carbon Monoxide and Ozone.

(B) Revised Regulation 45CSR9, effective on June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(50)(i)of this section.

[FR Doc. 02–25283 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0252; FRL–7380–8]

Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of revisions to the Antelope Valley and South Coast portions of the California State Implementation Plan (SIP). The revisions would provide local agencies broad discretion to suspend rules, regulations or orders during state or federally declared state of emergencies. EPA proposed disapproval of these revisions in the **Federal Register** on March 31, 2000. We are finalizing disapproving under authority of the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on November 6, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812

Antelope Valley Air Pollution Control District, 315 W. Pondera Street, Lancaster, California 93534

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

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415) 947–4120.

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

I. Proposed Action

On March 31, 2000 (65 FR 17229), EPA proposed to disapprove the following rules that were submitted for inclusion into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAPCD	118	Emergencies	8/19/97	3/10/98
SCAQMD	118	Emergencies	12/7/95	5/18/98

We proposed to disapprove these rules because we determined that they did not comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received one comment regarding SCAQMD Rule 118, submitted via fax by Barbara Baird of SCAQMD. A signed version of this comment was subsequently submitted dated May 3, 2000, which we are treating as the official comment.

The commenter asserts that EPA must approve Rule 118 because the rule will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress (RFP) towards attainment of the NAAQS or any other requirement of the Act. EPA disagrees with this assertion as follows.

1. A state of emergency could potentially last for weeks or even months. During this time (and, in theory, in perpetuity under 118(d)(2)), Rule 118 would allow suspension of any and all requirements for air pollution sources regardless of the effects on human health or the environment. We do not believe that such a broad grant of immunity is in the public interest or is consistent with the CAA. For example, the CAA prohibits SCAQMD and EPA from relaxing SIP requirements or taking actions that would interfere with attainment, RFP, or any other requirements of the Act.[1] Because Rule 118 is written very broadly, it does not ensure compliance with these CAA provisions.

2. The impacts of suspending requirements under Rule 118 could last far beyond the emergency period. For example, an air pollution source could be constructed or modified during a state of emergency without the pollution controls or public review that are normally required. After the emergency period, such a source could continue to emit air pollution at levels that might interfere with attainment, RFP, permit requirements in CAA section 173 or other requirements of the Act, and even at levels directly harmful to human health and the environment. Under Rule 118, however, the source might not be held responsible for those consequences because the permitting rules were suspended when it was constructed or modified. Because such a rule is inconsistent with the CAA and contrary to the public interest, it should not be approved into the SIP.

3. The CAA requires SIPs to contain enforceable emission limits and other control measures.[2] Rule 118 would undermine this requirement by allowing SCAQMD broad discretion to suspend enforceable requirements in the SIP without consultation or approval from EPA or the public.

4. The CAA already allows states to suspend SIP requirements during certain emergencies, but is more focused than Rule 118 and provides for federal oversight.[3] We believe it provides the flexibility needed during an emergency while ensuring adequate protection of public health.

The commenter also states that some emergency situations could justify violation of SIP rules. If such situations

[1] *See e.g.,* 42 U.S.C. 7410(i), (1).

[2] *See* 7410(a)(2)(A).

[3] *See* 7410(f) and (g).

occur, EPA believes that enforcement discretion, which can consider various factors such as applicable CAA requirements and impacts on human health and the environment, is a more appropriate mechanism for addressing them than the broad discretion to grant immunity under Rule 118.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules do not comply with relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is disapproving these rules for inclusion into the California SIP. The effect of this action is that the federally enforceable California SIP remains unchanged. The current SIP does not contain any version of AVAPCD and SCAQMD Rule 118, Emergencies.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. 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 E.O. 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. 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. E.O. 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 E.O. 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 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 rule.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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.

EPA's 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 approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action 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 action because it does not require the public to perform activities conducive to the use of VCS.

I. 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 the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 52

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

Dated: August 29, 2002.

Laura Yoshi,

Deputy Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.242 is amended by adding paragraphs (a)(1)(ii) and (a)(2) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

(1) * * *

(ii) Rule 118, Emergencies, submitted on May 21, 1998.

(2) Antelope Valley Air Pollution Control District.

(i) Rule 118, Emergencies, submitted on March 10, 1998.

* * * * *

[FR Doc. 02–25282 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0369a; FRL–7387–1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) and Carbon Monoxide (CO) emissions from boilers, steam generators, and process heaters in petroleum refineries. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates these emission sources.

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comments by November 6, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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 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:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460

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

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

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

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?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local Agency	Rule No.	Rule Title	Adopted	Submitted
BAAQMD	9–10	Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries.	7/17/02	8/12/02

On September 11, 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?

BAAQMD adopted an earlier version of this rule on January 5, 1994, and CARB submitted it to us on July 23, 1996. We published a limited approval and limited disapproval of this previous version of Rule 9–10 into the SIP on March 29, 2001.

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 9–10 limits the emissions of nitrogen oxides and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries. On March 29, 2001, the EPA published a limited approval and limited disapproval of a previous version of this rule, because the rule improved the State Implementation Plan (SIP) overall, but some rule provisions failed to satisfy the requirements of section 110 of the Clean Air Act. Specifically, the district did not include adequate monitoring, source test, and recordkeeping requirements in the rule that was submitted to EPA.

On August 12, 2002, the district submitted a revised version of rule 9–10 for approval into the SIP. Rule 9–10, as revised, includes sections pertaining to monitoring, source test, and record keeping requirements to address the deficiencies identified by EPA in 2001. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rule must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), must not relax existing requirements approved into the SIP prior to 1990 (see section 193) and must not interfere with any applicable requirement or reasonable further progress (see section 110(l)). The BAAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 9–10 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
4. Requirement for Preparation, Adoption, and Submittal of Implementation Plans, U.S. EPA, 40 CFR part 51.
5. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, State of California Air Resources Board, July 18, 1991.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations, and adequately addresses the deficiencies identified in our 2001 limited disapproval. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by November 6, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on December 6, 2002. This will incorporate this rule into the federally enforceable SIP and will permanently terminate all sanctions and FIP clocks associated with our March 2001 limited disapproval.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. EPA has established a National Ambient Air Quality Standard (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations to achieve and maintain NAAQS. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

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.

TABLE 2.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
May 26, 1988	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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(300) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(300) Amended regulation for the following AQMD was submitted on August 12, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 9–10 adopted on January 5, 1994 and amended on July 17, 2002.

* * * * *

[FR Doc. 02–25297 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0369c; FRL–7387–2]

Interim Final Determination To Stay Sanctions, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay imposition of sanctions based on a proposed approval of revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP) published elsewhere in this issue of the **Federal Register**. The revisions concern BAAQMD Rule 9–10.

DATES: This interim final determination is effective on October 7, 2002. However, comments will be accepted until November 6, 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

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

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

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

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

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

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

I. Background

On March 29, 2001 (66 FR 17078), we published a limited approval and limited disapproval of BAAQMD Rule 9–10 as adopted locally on January 5, 1994 and submitted by the State on July 23, 1996. We based our limited disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after April 30, 2001 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On July 17, 2002, BAAQMD adopted revisions to Rule 9–10 that were intended to correct the deficiencies identified in our limited disapproval action. On August 12, 2002, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our March 29, 2001 disapproval action. In the final rule section of today's **Federal Register**, we have also published a parallel direct final rule approving the revisions to BAAQMD Rule 9–10. Based on today's proposed approval and parallel direct final approval, we are taking this final rulemaking action, effective on publication, to stay imposition of sanctions that were triggered by our March 29, 2001 limited disapproval.

EPA is providing the public with an opportunity to comment on this stay of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of the revised BAAQMD Rule 9–10, we will take final action finding that the state has not corrected the original disapproval deficiencies and reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay CAA section 179 sanctions associated with BAAQMD Rule 9–10 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action stays federal sanctions and imposes no additional requirements. Accordingly, the administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays sanctions, and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 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.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of October 7, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25296 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA135–4101a; FRL–7389–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Generic VOC and NO_X RACT Regulation and Revised Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania on behalf of the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality (hereafter the ACHD). These revisions consist of a generic regulation which requires major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) and related changes to the definitions of the terms ''major source'' and ''potential emissions'' and ''low NO_X burner with separate overfire air.'' This generic RACT regulation applies to major sources not otherwise subject to RACT pursuant to other ACHD regulations. These sources are located in Allegheny County. EPA is approving this revision to the SIP in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on November 21, 2002 without further notice, unless EPA receives adverse comments by November 6, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at *lewis.janice@epa.gov.* While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

On October 30, 1998, the Pennsylvania Department of Environmental Protection (PADEP), submitted on behalf of Allegheny County Health Department (ACHD) a formal revision to the State Implementation Plan (SIP) for the control of VOC and NO_X emissions from major sources. This revision included amendments to the definitions of the terms major source, potential emissions, and low NO_X burner with separate overair. This revision consists of new reasonably available control technology (RACT) regulations which would require sources that emit or have the

potential to emit 50 tons per year (tpy) or more of VOC or 100 tpy or more of NO_X in Allegheny County to comply with RACT requirements by May 31, 1995.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), major sources of VOC & NO_X located in Allegheny County were required to implement RACT by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). At the time of the SIP revision submittal, Allegheny County was classified as a moderate ozone nonattainment area. On October 19, 2001 (66 FR 53094), the Pittsburgh-Beaver Valley Ozone Area, which includes Allegheny County, was redesignated to attainment. The SIP submittal which is the subject of this rulemaking consists of Allegheny County's; Article XXI; Section 2105.06—Major Sources of NO_X and VOC Compounds and revisions to Section 2101.20 which amends definitions of the terms Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air.

II. Summary of SIP Revisions

A. Section 2105.06—Major Sources of Nitrogen Oxides (NO_X) and Volatile Organic Compounds (VOC)

Allegheny County's Article XXI, Section 2105.06 requires major sources of VOCs and NO_X for which no applicable emission limitations have been established, to identify their emissions, propose RACT, and to complete implementation of RACT by May 31, 1995. Subsequently, PADEP will submit for ACHD each source-specific RACT determination to EPA for approval as a SIP revision.

B. Section 2105.06(d) Presumptive RACT Requirements for Certain NO_X Sources

Section 2105.06(d) provides certain major NO_X sources with an alternative to case-by-case RACT determinations. This section specifies that presumptive RACT for coal-fired combustion units with a rated heat input equal to or greater than 100 million British Thermal Units per hour (mmBTU/hr) is the installation of low NO_X burners with separate overfired air. For units with a rated heat input between 20 mmBTUs/hr and 50 mmBTUs/hr presumptive RACT is an annual adjustment or tune-up of the combustion process to include at a minimum; Inspection, adjustment, cleaning, or replacement of fuel-burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer; inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO_X, and to the extent practicable minimize emissions of CO; and inspection of the air-to-fuel ration control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer. For all combustion units with a rated heat input equal to or greater than 20 mmBTU/hr and less than 50 mmBTU/hr, presumptive RACT is to record each adjustment in a permanently bound log book, or other methods approved by ACHD, which contains, at a minimum: The date of the adjustment procedure, the name of the service company and technicians, the operating rate or load after adjustment, the CO and NO_X emission rates after adjustment, the excess oxygen rate after adjustment, and other information required by the applicable operating permit.

For the following source types, presumptive RACT is the installation, maintenance, and operation of the source in accordance with manufacturer's specifications: (1) Boilers and other combustion sources with individual rated gross heat inputs less than 20mmBTUs/hr of operation; (2) combustion turbines with individual heat input rates less than 25mmBTU/hr which are used for natural gas distribution; (3) internal combustion engines rated at less than 50 brake horsepower (bhp) gross which are set and maintaining 4 degree retarded timing relative to standard timing; (4) incinerators or thermal/catalytic oxidizers used primarily for air pollution control; (5) any fuel-burning equipment, gas turbine, or internal combustion engine with an annual capacity factor of less than 5 percent, or an emergency standby engine operating less than 500 hours in a consecutive 12-month period; (6) sources which have been approved as meeting the Lowest Available Emission Rate (LAER) for NO_X emissions since November 15, 1990, with federally enforceable emission limitations; and (7) sources which have been approved as meeting the Best Available Control Technology (BACT) for NO_X emissions since November 15, 1990, with federally enforceable emissions limitations, also these sources must still meet any applicable, more stringent category-wide RACT requirements.

C. Section 2105.06(e) NO_X RACT Emission Averaging General Requirements

Section 2105.06(e) permits major NO_X sources to submit a RACT proposal that includes averaging of emissions at two or more facilities provided several conditions are met and the proposal is approved by EPA as a revision to the Pennsylvania SIP for Allegheny County. Among other conditions, the averaging scheme must require emission caps and enforceable emission rates at each participating source, telemetry links between the participating sources, and an up-front agreement that a violation at one of the participating sources is considered a violations at all of the participating sources.

D. Section 2105.06(f) Presumptive RACT Requirements for Certain VOC Sources

Section 2105.06(f) provides that RACT for VOC sources is the installation, maintenance, and operation of the source in accordance with the manufacturer's specifications. VOC sources that have been approved as meeting BACT and/or LAER since November 15, 1990, must also meet more stringent category-wide RACT emission limitations.

E. Section 2105.06(g) Recordkeeping

The recordkeeping provisions apply to all VOC and NO_X sources in Allegheny County. This section clearly requires that records be kept for a period of at least 2 years and that such records must provide sufficient data and calculations to demonstrate compliance with the applicable RACT requirements. This section also requires that sources of VOC and NO_X that claim exemptions from RACT maintain records that clearly demonstrate their exempt status.

F. Section 2101.20 Definition for Major Source, Potential Emissions and Low NO_X Burner With Separate Overfire Air

1. *Major Source*—The October 30, 1996 submittal amends the definitions of the terms Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air found in Section 2101.20. Allegheny County defines the term Major Source as any stationary source, or any group of stationary sources, that is located on one or more contiguous or adjacent properties, is under common control of the same person (or persons under common control), belongs to a single major industrial grouping, and is described as follows: For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOC or NO_X in areas classified as ''marginal'' or ''moderate,'' 50 tpy or more in areas classified as

''serious,'' 25 tpy or more in areas classified as ''severe,'' and ten (10) tpy or more in areas classified as ''extreme''; except that the references in this paragraph to 100, 50, 25, and ten (10) tpy of nitrogen oxides shall not apply with respect to any source of which the Administrator has made a finding, under Section 182 (f)(1) or (2) of the Clean Air Act, that requirements under Subsection 182(f) of the Act do not apply; for ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with the potential to emit 50 tpy or more of VOCs. The definition of a major source conforms to EPA's definition. For the purposes of defining ''major source,'' a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (*i.e.*, all have the same two-digit code) as described in the most recent Standard Industrial Classification Manual.

2. *Potential Emissions*—Allegheny County defines the term Potential Emissions as the maximum capability of a source to emit air contaminants, including fugitive emissions, under the physical and operational design of the source. Any physical or operational limitation on the capability to emit air contaminants, including air pollution control equipment and techniques and permit conditions limiting the operating rate, hours of operation, or fuels or raw materials used, shall be treated as part of the design of the source to the extent such limitation, or its effect on emissions, is federally enforceable under the provisions of the Clean Air Act.

3. *Low NO_X Burner with Separate Overfire Air*—Allegheny County defines this term as a burner design capable of reducing the formation of oxides of nitrogen (NO_X) emissions through substoichiometric combustion of fuel by means of a burner assembly consisting of two or more stages and the addition of secondary combustion air introduced downstream of the burner location.

III. EPA's Analysis of the SIP Revisions for Allegheny County

On October 16, 2001 (66 FR 52506), EPA fully approved the Commonwealth of Pennsylvania's Generic VOC and NO_X RACT regulations as they apply in the Pittsburgh-Beaver Valley Ozone area, including Allegheny County. All of the source specific RACT determinations for major sources of NO_X and VOC located in Allegheny County have already been issued by ACHD, submitted to EPA by PADEP, and approved by EPA as SIP revisions. In accordance with the EPA policy memorandum for ''Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements'' dated November 7, 1996, Allegheny County's generic RACT regulation is fully approvable because all of the source-specific RACT determinations have already been submitted and approved as SIP revisions, and there are no remaining unregulated sources. EPA has also determined that Allegheny County's regulation is consistent with Pennsylvania's generic VOC and NO_X RACT regulations which were fully approved for the Pittsburgh-Beaver Valley Ozone area, including Allegheny County, on October 16, 2001 (66 FR 52506).

IV. Final Action

EPA is granting full approval of Allegheny County's Generic VOC and NO_X RACT regulations, Article XXI, Section 2105.06—Major Sources of NO_X and VOC Compounds and revisions to Section 2101.20—Definitions for the terms Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air, as revisions to the Pennsylvania SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 21, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''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 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.*).

B. 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 the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule to approve and revise certain definitions ofAllegheny County's Generic VOC and NO_X RACT regulations do not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(157) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(157) Approval of revisions to the Allegheny County Regulations, Article XXI pertaining to Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Definitions for Major Source, Potential Emissions and Low NO_X burner with separate overfire air submitted on October 30, 1998, by the Pennsylvania Department of Environmental Protection on behalf of Allegheny County Health Department:

(i) Incorporation by reference.

(A) The letter dated October 30, 1998, from the Pennsylvania Department of Environmental Protection transmitting Allegheny County's Generic VOC and NO_X RACT regulations, Appendix 33; Article XXI, Section 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds and Section 2101.20—Definition for Major Source, Potential Emissions and Low NO_X Burner with Separate Overfire Air.

(B) Additions of the following Article XXI definitions and regulations, effective October 20, 1995:

(*1*) Regulation 2101.20—definitions of ''major source'' (introductory paragraph, paragraphs (d) and (e) and closing paragraph; only), ''potential emissions'' and ''low NO_X burner with separate overfire air.''

(*2*) Regulation 2105.06—Major Sources of Nitrogen Oxides and Volatile Organic Compounds.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(157)(i) of this section.

[FR Doc. 02–25285 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0046a; FRL–7383–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana: General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving revisions to the Montana State Implementation Plan (SIP) submitted by the Governor of Montana on August 26, 1999. The revisions adopt Administrative Rules of Montana (ARM), Sub-Chapter 14, ''Conformity of General Federal Actions,'' Sections 17.8.1401 and 17.8.1402, into the SIP. The rules require conformity of general Federal actions to assure that actions of federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the goals of the Montana SIP. EPA is taking this action under section 110 and 176 of the Clean Air Act (Act).

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comment by November 6, 2002. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and,

Air and Radiation Docket and Information, Room B–108, United States Environmental Protection Agency, (Mail Code 6102T), 1301 Constitution Avenue NW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Department of Environmental Quality, Planning, Prevention and Assistance

Division, 1520 East 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Telephone number: (303) 312–6445.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''our,'' or ''us'' refers to the United States Environmental Protection Agency.

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I. Background

a. What Is General Conformity?

The conformity rules assure that in air quality nonattainment or maintenance areas projected emissions stay within the emissions ceiling in the SIP. The rules for conformity of general Federal actions assure that actions of Federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the Montana SIP. Conformity first appeared in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

b. Who Must Follow General Conformity?

All Federal government agencies must follow The General Conformity rules. The General Conformity rules establish emissions thresholds for requiring a conformity analysis. The Federal agency taking the action is required to perform the conformity analysis. We published the first General Conformity rule on November 30, 1993 (58 FR 63214) and it was codified at 40 CFR part 93, subpart B.

c. How Is General Conformity Different From Transportation Conformity?

Section 176(c)(A) of the Act requires us to issue criteria and procedures for determining conformity of all Federal actions to applicable SIPs. 40 CFR part 93, subpart A spells out criteria and procedures for determining conformity of all Federal actions related to transportation projects funded or approved under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). 40 CFR part 93, subpart B provides criteria and procedures for determining the conformity of all other Federal actions to applicable SIPs. Examples of Federal actions covered by this rule may include but are not limited to reuse of military bases, private construction on Federal land, granting of permits, leasing of Federal land, and construction of Federal office buildings.

d. Why Is Montana Required To Create Its Own General Conformity Rule?

The Act requires each State to develop rules to implement the General Conformity rule. (*See* 40 CFR 93.151) EPA believes that State and local agencies have the primary responsibility for achieving the clean air goals established in the Act. Therefore, each State must submit a revised SIP that includes General Conformity criteria and procedures that are consistent with General Conformity rule. These criteria require that State rules must be at least as stringent as the requirements specified in EPA's General Conformity rule. Furthermore, State rules can only be more stringent if they apply equally to Federal and non-Federal entities.

II. Approval of the States' Transportation Conformity Rules

a. What Did the State Submit?

Section 110(k) of the Act addresses our actions on submissions of revisions to a SIP. The Act requires States to observe certain procedural requirements in developing SIP revisions for submission to us. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

On August 26, 1999, the Governor of Montana submitted a SIP revision that adopts Administrative Rules of Montana (ARM), Sub-Chapter 14, ''Conformity of General Federal Actions,'' Sections 17.8.1401 and 17.8.1402. The Montana Board of Environmental Review adopted this SIP revision at a public hearing on May 14, 1999 after appropriate public participation and interagency consultation and it became effective in the ARM as State law on June 4, 1999.

We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the Act. By operation of law under section 110(k)(1)(B) of the Act, the Governor's August 26, 1999, submittal became complete on February 26, 2000.

b. What Is EPA Approving Today and Why?

We are approving the Administrative Rules of Montana (ARM), Sub-Chapter 14, ''Conformity of General Federal Actions,'' Sections 17.8.1401 and 17.8.1402 submitted by the Governor of Montana on August 26, 1999. The Montana Board of Environmental Review adopted this SIP revision at a public hearing on May 14, 1999 after appropriate public participation and interagency consultation and it became effective in the ARM as State law on June 4, 1999. The Montana rules are consistent with the Federal General Conformity rules.

Montana incorporated 40 CFR part 93, subpart B into the State rules. Montana modified definitions found in 40 CFR part 93, subpart B and incorporated them into the State rule. The definitions of ''MPO'' (Metropolitan Planning Organization) and ''state air quality agency'' were modified to incorporate meaning specific to Montana. Montana incorporated 40 CFR 93.153 and 93.160 with modifications to provide language consistent with a State rule rather than a Federal rule. We agree with these minor changes. It should be noted that Administrative Rules of Montana (ARM)

Section 17.8.1402, a subject of this action, references ARM Section 17.8.1302 which we did not act on in a previous **Federal Register** action (66 FR 48561, September 21, 2001). ARM 17.8.1302 includes an incorporation by reference (IBR) of 40 CFR part 93, subpart A. EPA excluded ARM Section 17.8.1302 because of the IBR. The rationale for not acting on ARM 17.8.1302 is discussed in a separate action (66 FR 48561, September 21, 2001).

III. Final Action

In this action, we are approving the adoption of ARM, Sub-Chapter 14, ''Conformity of General Federal Actions,'' Sections 17.8.1401 and 17.8.1402 to the Montana SIP. This SIP revision was submitted by the Governor of Montana on August 26, 1999. We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002, without further notice unless we receive adverse comments by November 6, 2002. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule, in the **Federal Register**, informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 6, 2002, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Consideration of Clean Air Act Section 110(l)

Section 110(l) of the Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable progress towards attainment of a National Ambient Air Quality Standard (NAAQS) or any other applicable requirements of the Act. This SIP revision is consistent with Federal requirements and does not interfere with any applicable requirements of the Act. Therefore, we conclude that our approval of ARM, Sub-Chapter 14, ''Conformity of General Federal Actions,'' Sections 17.8.1401 and 17.8.1402 meets the intent of section 110(l) of the Act.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 12, 2002.

Jack McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(56) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(56) On August 26, 1999, the Governor of Montana submitted Administrative Rules of Montana Sub-Chapter 14, ''Conformity of General Federal Actions'' that incorporates conformity of general federal actions to state or federal implementation plans, implementing 40 CFR part 93, subpart B into State regulation.

(i) Incorporation by reference.

(A) Administrative Rules of Montana 17.8.1401, and 17.8.1402 effective June 4, 1999.

[FR Doc. 02–25287 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 61

[ND–001–0005a & 0007a; FRL–7379–8]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program.

In addition, EPA is providing notice that on January 3, 2002, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards (NSPS), as of August 1, 2000. Finally, given that on July 7, 1995 EPA delegated authority to North Dakota to implement and enforce the Clean Air Act section 112 requirements, including, among other things, the National Emission Standards for Hazardous Air Pollutants (NESHAPs), EPA is now removing the State's part 61 regulations from the federally-approved SIP.

DATES: This direct final rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comment by November 6, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Mail written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2405. Documents relevant to this action can be perused during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2405. Copies of the incorporation by reference material are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

I. Background

A. Procedural Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action [*see* section 110(k)(1) of the Act and 57 FR 13565]. EPA's completeness criteria for SIP submittals can be found in 40 CFR part 51, appendix V. EPA attempts to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we don't determine completeness within six months after we receive it.

To provide for public comment, the North Dakota Department of Health (NDDH), after providing adequate notice, held a public hearing on September 28, 2000 to address the revisions to the SIP and Air Pollution Control Rules. Following the public hearing, public comment period, and legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the rule revisions, which became effective on June 1, 2001.

The Governor of North Dakota submitted the SIP revisions to EPA with a letter dated June 21, 2001. We reviewed them to determine completeness under the completeness criteria in 40 CFR part 51, appendix V. We found the submittal complete and so notified the Governor in a letter dated July 26, 2001. That letter also described the next steps to be taken in our review.

B. June 21, 2001 Revisions

As noted above, we will handle separately the revisions in the June 21, 2001 submittal regarding Chapter 33–15–21 (the State's Acid Rain Program) and a direct delegation request for North Dakota Air Pollution Control Rules Chapter 33–15–22, regarding emission standards for hazardous air pollutants for source categories. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below). The revisions in the June 21, 2001 submittal to be addressed in this document pertain to general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration, which involve the following chapters of the North Dakota Administrative Code (N.D.A.C.): 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate

(subsection specific to exclusions from Title V permit to operate requirements only); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions.

1. Chapter 33–15–01, N.D.A.C., General Provisions

The definition for ''public nuisance'' was removed from this chapter because the State believes it is covered under the definition of ''air pollution.'' In addition changes were made to clarify reporting requirements when stack testing for air contaminant emissions. The requirements are consistent with 40 CFR parts 60, 61, 63, and 75. Because these revisions are consistent with Federal requirements, they are approvable.

2. Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted

In Section 33–15–05–04, Methods of Measurement, the State deleted the F factors for various fuels and replaced them with a reference to 40 CFR part 60, Appendix A, Method 19. This revision simply incorporated reference information from Federal rules and is approvable.

3. Chapter 33–15–14, N.D.A.C., Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (New subsection entitled Source Exclusions from Title V Permit to Operate Requirements)

Subsection 33–15–14–07 was added to provide an exemption from the Title V permitting requirements for certain gasoline service stations, bulk gasoline plants, coating sources, printing, publishing and packaging operations, degreasers using volatile organic solvents, and hot mix asphalt plants. The sources that qualify for this exemption will be required to maintain certain records which demonstrate that they are minor sources and in some instances, report to the State.

This exclusionary rule creates generic potential-to-emit (PTE) limits for specific source categories, and thereby clarifies which of the sources within the specific categories are minor with respect to the Title V operating permit requirements. The rule is only intended to exclude certain sources from the requirements of Title V, but not from North Dakota's construction or minor source operating permit programs. EPA's authority for approval of exclusionary rules, generally, is Section 110 of the Clean Air Act, which allows us to approve preconstruction permit programs and rules and non-title V operating permit programs and rules. Therefore, we are approving this new exclusionary subsection, 33–15–14–07, as part of the federally-approved SIP.

4. Chapter 33–15–15, N.D.A.C., Prevention of Significant Deterioration

The definition of ''significant'' was updated to match the Federal definition. In addition, a provision was removed that did not allow a PSD source to consume more than one-half of the available increment in another state unless approved by the North Dakota Health Department after consultation with the other state. The removal of this provision was made to make the State rules more consistent with Federal requirements (40 CFR 51.166 and 40 CFR 52.21 do not include this requirement). Although there is no longer a consultation requirement, there are still requirements under ND's PSD program for notice to an affected state and an affected Federal Land Manager of any source which may significantly impact their land. This notification usually takes the form of a copy of the public notice, a copy of the related analyses, and a copy of the draft permit. The affected parties then have the opportunity during the public comment period to provide comments to the NDDH. Since the revisions to this chapter are consistent with Federal requirements, they are approvable.

5. Chapter 33–15–17, N.D.A.C., Restriction of Fugitive Emissions

The revisions to this chapter involved deleting a reference to nuisances and replacing it with a requirement that a source cannot cause air pollution as defined in the general provisions chapter (to be consistent with the changes made to Chapter 33–15–01, discussed above). These revisions are approvable because the State believes that nuisances are covered under its definition of ''air pollution.''

C. Delegation of Authority

1. NSPS

With the June 21, 2001 submittal, North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12, N.D.A.C. On January 3, 2002 delegation was given with the following letter:

Ref: 8P–AR

Honorable John Hoeven,

Governor of North Dakota, State Capitol, 600 E Boulevard Avenue, Bismarck, North Dakota 58505–0001.

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Hoeven:

In a June 21, 2001, letter from you and a June 26, 2001, letter from Francis Schwindt, North Dakota Department of Health, the State of North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12 of the North Dakota Administrative Code. The State's NSPS regulations incorporate by reference the Federal NSPS in 40 CFR Part 60 as in effect on August 1, 2000, with the exception of subpart Eb, which the State has not adopted. In the above-mentioned letters, the State requests authority for implementation and enforcement of the NSPS through the delegation of authority process pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. 7411(c), as amended.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those standards, so long as the State's regulations are not less stringent than the Federal regulations. EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of North Dakota. Therefore, pursuant to section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR part 60, EPA hereby delegates its authority for the implementation and enforcement of one NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR part 60 as in effect on August 1, 2000, with the exception of subpart Eb, which the State has not adopted.

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. For the NSPS categories previously delegated to North Dakota, our May 28, 1998 and May 7, 1999, delegation letters list those sections which can't be delegated to the State. Those letters are enclosed for your use.

(C) As 40 CFR part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner, and submit to EPA requests for updates to its delegated authority.

This delegation is based upon and is a continuation of the conditions stated in EPA's original delegation letter of August 30, 1976, to the Honorable Arthur A. Link, then Governor of North Dakota, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority, as stated in condition 2. In addition, if at any time there is a conflict between a State and a Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 7. A copy of the August 30, 1976, letter was published in the notices section of the **Federal Register** on

October 13, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new and modified sources shall be submitted to the State of North Dakota (41 FR 44859). Copies of the **Federal Register** notices are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objection from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please call me, or have your staff contact Richard Long, Director of our Air and Radiation Program, at 303–312–6005.

Sincerely yours,
Jack W. McGraw,
Acting Regional Administrator.

Enclosures.

cc: Francis Schwindt, ND Department of Health, Terry O'Clair, ND Department of Health.

2. Part 61 NESHAPs

EPA is providing notice that with the July 7, 1995 interim approval of North Dakota's Title V Operating Permit program (see 60 FR 35335), it granted delegation of authority to North Dakota to implement and enforce Clean Air Act section 112 requirements. This delegation of authority includes, among other things, the NESHAPs promulgated in 40 CFR part 61 (''part 61 NESHAPs''). The State's part 61 NESHAPs regulations are contained in Chapter 33–15–13, N.D.A.C.

With a September 10, 1997 submittal, the State revised Chapter 33–15–13 to incorporate all Federal part 61 NESHAPs (except 40 CFR part 61, subparts B, H, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of October 1, 1996. However, the State's NESHAPs authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 61.

In addition, EPA cannot act on the State's request for delegation of authority for 40 CFR part 61, subpart I (regarding radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission and other Federal facilities not covered by subpart H) because EPA rescinded subpart I (see 61 FR 68972–68981, December 30, 1996) subsequent to the State's adoption of these revisions.

Given that the State has had delegation of authority for part 61 NESHAPs for many years, EPA is removing ''Emission Standards for Hazardous Air Pollutants, Chapter 33–15–13 , N.D.A.C., from the federally-approved SIP.

II. Section 110(l)

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of the NAAQS or any other applicable requirements of the Act. The North Dakota SIP revisions that are the subject of this document do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act. The SIP revision amends the State's General Provisions and Methods of Measurement and these changes are consistent with Federal requirements and rules. The new rules that provide for source exclusions from the title V permit to operate requirements are consistent with EPA's authority to approve exclusionary rules under section 110 of the Clean Air Act and the rules do not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act because they are consistent with the April 14, 1998, EPA guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled ''Potential to Emit (PTE) Guidance for Specific Source Categories.'' The update to the State's PSD rules mirror the Federal rules. Finally, the State's removal of the term ''nuisance'' does not interfere with the maintenance of the NAAQS or any other applicable requirements of the Act since nuisances can still be addressed under the State's definition of ''air pollution.''

III. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated June 21, 2001. The revisions in the June 21, 2001 submittal which are being approved in this document involve the following chapters of the North Dakota Administrative Code: 33–15–01 General Provisions; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (specifically, subsection 33–15–14–07, Source Exclusions from Title V Permit to Operate Requirements); 33–15–15 Prevention of Significant Deterioration; and 33–15–17 Restriction of Fugitive Emissions. The June 21, 2001 submittal also included requests for direct delegation of Chapter 33–15–21, Acid Rain Program and Chapter 33–15–22, Emission Standards for Hazardous Air Pollutants for Source Categories, which are being handled separately.

In addition, as requested by the State with its June 21, 2001 submittal, EPA is providing notice that it granted delegation of authority to North Dakota on January 3, 2002, to implement and enforce the NSPS promulgated in 40 CFR part 60, promulgated as of August 1, 2001 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

Finally, EPA is providing notice that with the July 7, 1995 interim approval of North Dakota's Title V Operating Permit program (*see* 60 FR 35335), it granted delegation of authority to North Dakota to implement and enforce Clean Air Act section 112 requirements. This delegation of authority includes, among other things, the NESHAPs promulgated in 40 CFR part 61 (''part 61 NESHAPs''). The State's part 61 NESHAPs regulations are contained in Chapter 33–15–13 of the North Dakota Administrative Code. With a September 10, 1997 submittal, the State revised Chapter 33–15–13 to incorporate all Federal part 61 NESHAPs (except 40 CFR part 61, subparts B, H, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of October 1, 1996. However, the State's NESHAPs authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 61. Given that the State has had delegation of authority for part 61 NESHAPs for many years, EPA is removing Emission Standards for Hazardous Air Pollutants, Chapter 33–15–13 of the North Dakota Administrative Code, from the federally-approved SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this

rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

Dated: September 3, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(32) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(32) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated June 21, 2001. The revisions address air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–04, 33–15–01–12, and 33–15–01–15; Emissions of Particulate Matter Restricted 33–15–05–04.1; Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33–15–14–02.13.b.1, 33–15–14–03.1.c, and 33–15–14–07; Prevention of Significant Deterioration of Air Quality 33–15–15–01.1.hh and 33–15–15–01.2; and Restriction of Fugitive Emissions 33–15–17–01, effective June 1, 2001.

(B) Revisions to the Air Pollution Control Rules as follows: Emissions of Particulate Matter Restricted 33–15–05–03.1, repealed effective July 12, 2000.

3. A new § 52.1836 is added to read as follows:

§ 52.1836 Change to approved plan.

North Dakota Administrative Code Chapter 33–15–13, National Emission Standards for Hazardous Air Pollutants, is removed from the approved plan. This change is a result of EPA's July 7, 1995 interim approval of North Dakota's Title V Operating Permit program, in which it granted delegation of authority to North Dakota to implement and enforce Clean Air Act section 112 requirements. That delegation of authority includes, among other things, the NESHAPs promulgated in 40 CFR part 61 (''part 61 NESHAPs''). With a September 10, 1997 submittal, the State requested delegation of authority to implement and enforce the Clean Air Act part 61 NESHAPSs (except subparts B, H, K, Q, R, T, and W, pertaining to radionuclides), as in effect on October 1, 1996. EPA did not act on the State's request for delegation of authority for 40 CFR part 61, subpart I (regarding radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission and other Federal facilities not covered by subpart H) because EPA rescinded subpart I subsequent to the State's adoption of these revisions.

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

Subpart A—General Provisions

2. In § 61.04(c), the table entitled ''Region VIII. Delegation Status of National Emission Standards for Hazardous Air Pollutants [1]'' is amended by revising the table heading for ''ND'' as follows:

§ 61.04 Address.

* * * * *

(c) * * *

REGION VIII.—DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS [1]

Subpart	CO	MT [2]	ND	SD [2]	UT [2]	WY
* * * * * * *						

* * * * *

[1] Authorities which may not be delegated include 40 CFR 61.04(b), 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), 61.172(b)(2)(ii)(B), 61.172(b)(2)(ii)(C), 61.174 (a)(2), 61.174(a)(3), 61.242–1(c)(2), 61.244, and all authorities listed as not delegable in each subpart under Delegation of Authority.

[2] Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP) with the exception of the radionuclide NESHAP Subparts B, Q, R, T, W which were approved through section 112(l) of the Clean Air Act.

* * * * *

[FR Doc. 02–25289 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2288, MB Docket No. 02–142, RM–10436]

Digital Television Broadcast Service; Galveston, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Telemundo of Galveston-Houston License Corporation, licensee of station KTMD–TV, NTSC channel 49 and permittee of DTV station KTMD–DT, DTV channel 47, Galveston, Texas, substitutes TV channel 48 for TV channel 47; and DTV channel 48c for DTV channel 47 at Galveston, Texas. *See* 67 FR 41363, June 18, 2002. TV channel 47 can be allotted to Galveston with a zero offset at coordinates 29–30–24 N. and 94–30–48 W. DTV channel 48c can be allotted to Galveston in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 29–34–15 N. and 95–30–37 W. with a power of 1000, HAAT of 599 meters and with a DTV service population of 3899 thousand. With this action, this proceeding is terminated.

DATES: Effective November 7, 2002.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–142, adopted September 16, 2002, and released September 23, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Texas, is amended by removing TV channel 48 and adding TV channel 47 at Galveston.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 47 and adding DTV channel 48c at Galveston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25353 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2366, MB Docket No. 02–132, RM–10374]

Digital Television Broadcast Service; Montgomery, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Alabama Educational Television Commission and LibCo, Inc., substitutes DTV channel *27 for DTV channel *14; and DTV channel 14 for DTV channel 57 at Montgomery, Alabama. *See* 67 FR 38924, June 6, 2002. DTV channels *27 and 14 can be allotted to Montgomery, Alabama, for stations WAIQ–DT and WSFA–DT, respectively, in compliance with the principle community coverage requirements of Section 73.625(a). DTV channel *27 can be allotted at coordinates 32–22–55 N. and 86–17–33 W. with a power of 750, HAAT of 183 meters and with a DTV service population of 522 thousand. DTV channel 14 can be allotted at coordinates 31–58–28 N. and 86–09–44 W. with a power of 600, HAAT of 530 meters and with a DTV service population of 714 thousand. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–132, adopted September 23, 2002, and released September 27, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II,

445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alabama, is amended by removing DTV channel *14 and adding DTV channel *27 at Montgomery.

3. Section 73.622(b), the Table of Digital Television Allotments under Alabama, is amended by removing DTV channel 57 and adding DTV channel 14 at Montgomery.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25352 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2367, MB Docket No. 02–153, RM–1–454]

Television Broadcast Service; New Iberia, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Iberia Communications, LLC, substitutes channel 50 for channel 53–. *See* 67 FR 47757, July 22, 2002. TV channel 50 can be allotted to New Iberia, Louisiana, in compliance with the principle community coverage requirements of Section 73.610 at coordinates 29–55–12 N. and 91–46–07 W. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–153, adopted September 23, 2002, and released September 27, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Louisiana is amended by removing TV channel 53 and adding TV channel 50 at New Iberia.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25350 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2368, MB Docket No. 02–152, RM–10457]

Television Broadcast Service; Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KB Prime Media LLC, substitutes channel 46 – for channel 56+ at Wiggins, Mississippi. *See* 67 FR 44790, July 5, 2002. TV channel 46 – can be allotted to Wiggins in compliance with the principle community coverage requirements of Section 73.610 at coordinates 30–32–32 N. and 89–10–40 W. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–152, adopted September 23, 2002, and released September 27, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Mississippi, is amended by removing TV channel 56+ and adding TV channel 46 – at Wiggins.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–25349 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077–2077–01; I.D. 032502A]

RIN 0648–AP85

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications; Pacific Whiting

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

ACTION: Emergency rule and extension of expiration date.

SUMMARY: This action extends an emergency rule, now in effect, that establishes the 2002 fishery specifications for Pacific whiting (whiting) in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. The intended effect of this action is to maintain allowable harvest levels of whiting based on the best available scientific information.

DATES: The expiration date of the emergency rule published on April 15, 2002 (67 FR 18117), is October 15, 2002. This action extends the emergency rule until April 15, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201, or by contacting Donald McIsaac at 503–326–6352, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Yvonne deReynier (Northwest Region, NMFS) 206–526–6140; or Svein Fougner (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: Electronic Access: This rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.access.gpo.gov/su__docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region Web site at *http://www/nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's Web site at *http://www.pcouncil.org.*

Background

On April 15, 2002, NMFS published an emergency rule (67 FR 18117) establishing a whiting acceptable biological catch (ABC) based on F40% F proxy with a medium recruitment scenario. The U.S.-Canada coastwide ABC was set at 208,000 mt, with a U.S. ABC of 166,000 mt. That emergency rule also adopted a U.S.-Canada coastwide optimum yield (OY) of 162,000 mt and a U.S. OY of 129,600 mt.

Each year, the whiting OY is allocated between the tribal and commercial sectors of the fishery. The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.324, allow for the allocation of fish to the tribes through the annual specification and management process. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the whiting fishery.

For 2002, NMFS set the tribal whiting allocation at 22,680 mt. The non-tribal commercial OY for whiting is 106,920 mt (the 129,600 mt OY minus the 22,680 mt tribal allocation). Each non-tribal sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (36,353 mt), motherships getting 24 percent (25,661 mt), and the shore-based sector getting 42 percent (44,906 mt).

Additional information concerning the 2002 whiting ABC and OY and sector allocations of whiting may be found in the April 15, 2002 (67 FR 18117), **Federal Register** document for this action. Extension of this emergency rule is authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Comments and Responses

During the comment period, NMFS received 1 letter from an association representing seafood processors and associated businesses that process, transport and sell whiting products. The comments resulted in no change to the emergency rule.

Comment 1: We request that the emergency rule be withdrawn and re-issued to establish whiting harvest levels as recommended by the Pacific Fishery Management Council.

Response: The Council's recommendation was disapproved by NMFS after considering the best available science. NMFS believes that the risk neutral medium recruitment scenario, instead of the Council's risk accepting recommendation, is supported by the best available science. With the April 15, 2002, emergency rule (67 FR 18117) extension herein, NMFS adopted a U.S. ABC of 166,000 mt and an OY of 129,600 mt, consistent with the risk neutral medium recruitment scenario.

Comment 2: The commenter requests that the treaty Indian tribal allocation of whiting be reduced to ''reflect a percentage reduction equal to that imposed on non-tribal fishermen.''

Response: Presumably the commenter refers to the fact that the tribal share for 2001 was 14.4 percent of the OY, while for 2002 it is 17.5 percent (and would have been 16.4 percent under the PFMC proposal rejected by NMFS).

The tribal share is determined by a ''sliding scale,'' OY-based methodology. This methodology, which has been in use since 1999, provides for a slighter higher percentage of the OY to go to the treaty fishery at lower OY levels (to a maximum of 17.5 percent), with lower percentages to the treaty fishery at higher OY levels. The ''sliding scale'' methodology was used to set the tribal shares in both 2001 and 2002. For OYs under 145,000 (as in 2002), this method sets the tribal share at 17.5 percent.

The sliding scale methodology has been the subject of extensive litigation, which continues today. In *United States* v. *Washington*, the Court held that the ''sliding scale'' methodology is consistent with the Magnuson-Stevens Act, and is the best available scientific method to determine the appropriate allocation of whiting to the tribes. *United States* v. *Washington* 143 F.Supp.2d 1218 (W.D. Wash. 2001). This ruling was reaffirmed in July 2002. *Midwater Trawlers Cooperative* v. *Daley*, C96–1808R (W.D. Wash. 2002) (Order Granting Defendants' Motion to Supplement Record, July 17, 2002). Additional briefing will occur in this case. However, at this time NMFS remains under a Court Order in *United States* v. *Washington* to use the ''sliding scale'' methodology unless the Secretary of Commerce finds just cause for its alteration or abandonment, the parties agree to a permissible alternative methodology, or further order issues from the Court. As one of these events has not yet occurred, NMFS is obligated by the Court to continue to use the ''sliding scale'' methodology. Since the methodology already encompasses OYs at all levels, it is not appropriate to reduce the tribal share specified by the ''sliding scale'' methodology simply because the OY declines.

Comment 3: The **Federal Register** document lists recruitment assumptions and their probabilities as point estimates and ignores the ranges associated with these. The Council's recommended OY was within the medium range and is risk neutral in spite of NMFS' attempt to characterize it as something else.

Response: The Council's Scientific and Statistical Committee noted that the ''medium'' recruitment assumption with an F40% FMSY proxy was the risk neutral characterization of the incoming recruits to the fishery. NMFS believes that the Council's choice to use a 1999 year class estimate midway between the medium and high estimate did not adequately protect the whiting stock given the high variance associated with forecasting recruitment and future biomass levels.

Comment 4: The retrospective analysis which shows that past recruitment levels in previous assessments were lower than predicted has no bearing on future assessments.

Response: The primary source of uncertainty in the whiting assessment concerned estimates of the fish spawned in 1999. At the time of the 2001 survey, the fish spawned in 1999 had only partially recruited to the fishery. Therefore, recruitment level of these young fish in the near future was not well estimated by the model and resulted in uncertainty about the effect they would have on the exploitable stock biomass. The 2002 stock assessment results suggest that a lower estimate of recruitment of the 1999 year class is two to three times more likely than a higher recruitment estimate. As fish spawned in 1999 mature and more survey and fishery dependent data become available, the strength of the 1999 year class will be better understood.

Comment 5: Detailed economic information provided by the public was not reflected in the **Federal Register** document and the economic impact was downplayed by NMFS.

Response: Although it was not specifically noted in the **Federal Register** document, NMFS did review economic information provided by the public at the Council's March 2002 meeting before making a final decision. NMFS recognized and clearly stated that the reduced whiting OY was expected to have a major economic impact on harvesters and processors in the short-term. However, NMFS believes the reductions were necessary for the long-term health of the whiting fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (AA,) has determined that this extension is needed to maintain the current ABC and OY for the entire year. The non-tribal catcher/processor sector's fishing activities are ongoing. Whiting is an overfished species and needs to be protected from overfishing. Maintaining the 2002 harvest levels set by the emergency rule (67 FR 18117, April 15, 2002,) will serve to protect whiting from overharvest for the remainder of 2002. Accordingly, the AA is extending the expiration date of this emergency rule until the effective date of the 2003 management measures, not to exceed 180 days.

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

Dated: October 1, 2002

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 02–25334 Filed 10–4–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 194
Monday, October 7, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, and 70

RIN 3150–AG85

Financial Assurance Amendments for Materials Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for financial assurance for certain materials licensees to bring the amount of financial assurance required more in line with current decommissioning costs. The objective of this proposed action is to maintain adequate financial assurance so that timely decommissioning can be carried out following shutdown of a licensed facility.

DATES: The comment period expires December 23, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203 e-mail, *cwp@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The NRC regulations requiring financial assurance for decommissioning are designed to ensure that adequate funding will be available for timely decommissioning by licensees following shutdown of normal operations. The financial assurance regulations are part of the overall NRC strategy to maintain safety and protection of the public and the environment during and after decommissioning and decontamination of nuclear facilities.

Financial assurance is composed of several parts: (1) Licensees for which financial assurance should be required must be identified; (2) the amount of financial assurance required for each licensee must be adequate to fund current decommissioning costs; and (3) appropriate financial assurance mechanisms (surety bonds, escrow accounts, parent or self-guarantee, etc.) must be required. The objective of this rulemaking is to maintain adequate financial assurance by addressing gaps in the current regulatory framework regarding (1) and (2) above.

Under current decommissioning regulations, materials licensees using substantial quantities of nuclear materials must provide financial assurance for decommissioning (most materials licensees do not need to provide financial assurance because their possession limits are below the threshold for requiring financial assurance). NRC has approximately 4900 materials licensees of which approximately 10 percent require financial assurance. The financial assurance requirements were established in 1988 as part of the decommissioning rulemaking (53 FR 24018; June 27, 1988). Revision to some of the financial assurance requirements for materials licensees are needed because there have been changes in decommissioning costs since that time. Also, experience has revealed that for certain types of licensees, such as waste brokers, special circumstances exist that require different financial assurance considerations.

Discussion

This proposed rule would maintain assurance of adequate funding for timely decommissioning. The current financial assurance regulations do not provide adequate coverage of potential decommissioning costs for certain types of materials licensees, mainly due to large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these financial assurance coverage shortfalls to remain could increase the likelihood of inadequate funding for timely decommissioning.

Inadequate/untimely funding of decommissioning could have adverse impacts on public health and safety, and protection of the environment. If a site is not decommissioned due to insufficient funds, there is an increased likelihood of contamination and/or exposure of members of the public. The changes to the regulations proposed here are focused on areas where the likelihood of inadequate funding relative to decommissioning costs is high. The proposed changes address situations where currently required amounts of financial assurance appear to be substantially less than decommissioning costs. The proposed changes would provide approximately $80 million in additional financial assurance.[1]

These proposed amendments were developed prior to recent heightened concerns about security of nuclear material. Because the objective of the

[1] Staff estimate based on numbers of licensees using each of the 3 certification amounts.

amendments is timely decommissioning of nuclear facilities with appropriate disposal of radioactive materials, these amendments should also enhance security of nuclear materials.

Failure to provide adequate financial assurance for decommissioning also has equity considerations. The potential costs to the public when it is required to cover the expense of cleanup of contaminated facilities where financial assurance is inadequate, must be considered. Equity considerations call for adequate financial assurance so that a licensee's decommissioning costs are borne by that licensee, not the Federal, State, or local government.

The NRC has completed studies of financial assurance requirements for materials licensees. The studies were carried out by ICF, Inc., a contractor with extensive experience in financial assurance. The studies, ''Assessment of the Financial Assurance Requirements for Waste Broker Material Licensees,'' ICF, Inc., July 1999, and ''Analysis of Decommissioning Certification Amounts for Materials Licensees—Parts 30, 40, and 70,'' ICF Consulting, December 2000, provide information that was used to develop this proposed rulemaking.[2] In addition, Pacific Northwest National Laboratory (PNNL), which has extensive experience in analyzing decommissioning costs, has completed several reports on current decommissioning costs for various types of nuclear facilities. The PNNL reports, *Revised Analysis of Decommissioning Reference Non-Fuel Cycle Facilities*, draft NUREG/CR–6477, PNNL, 1996, and *Technology, Safety, and Costs of Decommissioning a Reference Large Irradiator and Reference Sealed Sources*, NUREG/CR–6280, PNNL, January 1996, also form a basis for this proposed rule.[3]

Proposed Changes

The changes being proposed are in four areas:

(1) Large sealed source licensees—large irradiators—would no longer be able to use the $75,000 certification amount as a basis for financial assurance, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(2) All waste broker licensees would have to provide financial assurance, would not be permitted to use the certification amounts, and would have to base their financial assurance on a site-specific decommissioning cost estimate;

(3) The certification amounts for licensees would be increased by 50 percent; and

(4) Decommissioning cost estimates would have to be updated at least every 3 years.

Large Irradiators

Large irradiator licensees engage in the industrial irradiation of material primarily for purposes of sterilization (*e.g.*, food products and medical equipment). These large irradiators operate facilities that have a large number of sealed sources, with possession limits of several million curies. The NRC has approximately 10 irradiator licensees authorized for possession of 1 million curies or more. Under present financial assurance requirements, these licensees may use the $75,000 certification amount as a basis for financial assurance. Although this licensed radioactive material is all in the form of sealed sources, estimated current decommissioning costs for this type of facility, such as for source removal, shipping, and supplier handling charges, greatly exceed the $75,000 certification amount that they may use.

PNNL's study of large irradiator decommissioning costs, *Technology, Safety, and Costs of Decommissioning a Reference Large Irradiator and Reference Sealed Sources,* NUREG/CR–6280, PNNL, January 1996, provides estimates of decommissioning costs under a number of scenarios. Estimated decommissioning costs for an irradiator facility with 1 million curies of source activity are at least $128,000; for a facility with 2 million curies, estimated costs are at least $231,000. These cost estimates are for the least costly decommissioning scenarios, with all sources being returned to the supplier and no leakage of contamination.

The NRC is proposing to put an upper limit on the size of a sealed source licensee able to continue to use the $75,000 certification amount. This proposed change would require a sealed source licensee with possession limits of over 1 million curies of Co-60, the radioactive material generally used by large irradiators, to base financial assurance on a decommissioning cost estimate. This facility-specific cost estimate is likely to be higher than $75,000, and the licensee would incur higher financial assurance costs. However, the facility-specific cost estimate should provide a more accurate estimate of decommissioning costs.

Waste Brokers

Waste broker licensees handle radioactive waste associated with or generated by other licensees and non-licensed entities. There is no definition of ''waste broker'' in existing NRC regulations and the term is commonly used to describe several different activities. These amendments would add a definition of ''waste broker'' to cover licensees that accept radioactive material for the purpose of processing, compacting, repackaging, or otherwise preparing it for disposal, or for storage. The NRC has approximately 15 waste broker licensees, of which eight require financial assurance under current regulations.[4] Many waste broker licensees also conduct other types of licensed activities as part of their overall business. The NRC financial assurance regulations treat waste brokers in the same way as other materials licensees; there are no special financial assurance requirements applicable only to waste brokers.

The NRC has conducted an analysis of the adequacy of financial assurance requirements for waste brokers. The ICF report, ''Assessment of the Financial Assurance Requirements for Waste Broker Material Licensees,'' ICF, Inc., July 1999, concludes that waste brokers engage in fundamentally different types of activities than other materials licensees, and require treatment appropriate to these activities.

From the viewpoint of financial assurance, waste broker activities are unique in that: (1) Waste brokers are likely to have radioactive wastes generated by other licensees, and the inventory of waste a broker will have onsite at any time may fluctuate considerably and be difficult to predict; and (2) waste brokers have a financial interest in maximizing the amount of radioactive waste that they handle—waste broker revenues are directly correlated to the amount of waste accepted.

The disposal costs of waste inventories are very high—much greater than when the decommissioning regulations were promulgated. The current financial assurance regulations do not consider the costs of disposing of significant volumes of waste generated outside the decommissioning process, such as inventories of brokered waste. Waste brokers may currently maintain a level of financial assurance that is inadequate for disposal of waste inventories. Charges for disposal of waste at low-level waste disposal

[2] These documents are available on NRC's interactive rulemaking Web site *http://ruleforum.llnl.gov*.

[3] These documents are available on NRC's interactive rulemaking Web site *http://ruleforum.llnl.gov*.

[4] ''Assessment of the Financial Assurance Requirements for Waste Broker Material Licensees,'' ICF Consulting, 1999, p. 6.

facilities are based on the volume of waste disposed and also on the level of activity (*e.g.*, quantity of curies) of the waste. The possession limits that determine what level of financial assurance a waste broker licensee must have are based on the quantity of curies of material possessed, not volume of material possessed. A waste broker that must dispose of large volumes of relatively low activity waste would be subject to substantial waste disposal charges. That same waste broker might have an inadequate amount of financial assurance to pay these charges because the financial assurance requirements are based only on curie level.

The 1988 financial assurance regulations made no special provision for waste brokers. However, it is now clear that the activities of a waste broker licensee have very different implications for decommissioning costs than is the case for other types of materials licensees. For example, a laboratory using radioactive materials in making products will have a licensed possession limit based on the amount of radioactive materials in use at the facility. Most of the inventory of radioactive material will pass out of the licensee's possession as products are sold and shipped to users. Even in the case of bankruptcy and abrupt shutdown of operations, the product of the laboratory can most likely be sold or transferred. Decommissioning activities will consist of decontamination of the facility and some limited waste disposal. On the other hand, a waste broker having similar possession limits has limited options to reduce its inventory of radioactive material (waste) usually by disposal at a radioactive waste disposal facility. Thus, decommissioning costs can be substantially higher for a waste broker than for another type of licensee with similar possession limits.

The NRC is proposing that all waste broker licensees be required to have financial assurance, and to base financial assurance on a facility-specific decommissioning cost estimate that takes into account other factors such as actual volume of material in addition to possession limits in curies.

Certification Amounts

The amount of financial assurance that must be provided can be based on either: (1) A facility-specific decommissioning cost estimate provided by the licensee in a decommissioning funding plan;[5] or (2), one of several dollar amounts (certification amounts) specified in the regulations. The certification amounts are based on possession limits, and range from $75,000 for sealed source licensees to $750,000 for licensees possessing large quantities of unsealed material. At present, about 60 percent of materials licensees required to have financial assurance use the certification amounts. Which certification amount is required of a licensee depends on the possession limits for radioactive materials applicable to that license.

The present certification amounts are based on decommissioning cost estimates that are now approximately 15 years old. When the decommissioning rule was established, it was expected that periodic adjustments to the certification amounts would be needed as decommissioning costs changed over time. NRC has reviewed current decommissioning cost information and is proposing adjustments to the certification amounts. General inflation since 1988, as measured by the Gross Domestic Product price deflator (price index), has resulted in current prices that are approximately 40 percent higher than they were when the final decommissioning rule was published.[6] Specific information on decommissioning costs also shows a substantial increase. NRC regulations for decommissioning of nuclear power reactor licensees at 10 CFR 50.75 contain a cost adjustment factor for licensees to update the minimum amount of financial assurance required. This adjustment factor, which takes into account labor, energy, and waste disposal costs, shows a minimum increase of approximately 65 percent in reactor decommissioning costs from 1986 to 2000.[7] A major factor underlying the increase is waste disposal charges, which have gone up by at least 120 percent during this period. The increase is much greater in certain geographic areas—disposal costs vary considerably according to disposal site.[8]

A study by PNNL for NRC on costs of decommissioning for six different types of reference non-fuel cycle nuclear materials licensees concludes that decommissioning costs increased by 34–66 percent between 1986 and 1996.[9] An ICF study found that estimates of decommissioning costs for a majority of a sample of Part 30 licensees using certification amounts exceed the applicable certification amount by a substantial margin.[10]

The NRC is proposing to raise all certification amounts by 50 percent. The proposed certification amounts would be $113K for sealed source licensees, and $225K and $1,125K for licensees using unsealed sources. The revisions to the certification amounts proposed in this notice are aimed at keeping the certification amounts reasonably in accordance with current decommissioning costs for a typical licensee that has possession limits that allow it to use that particular certification amount.

The certification amounts were never intended to be an exact measure of decommissioning costs for all licensees. The universe of materials licensees required to have financial assurance is composed of very diverse types of operations. Actual decommissioning costs vary considerably, depending on extent and type of activities, and quantities and types of radionuclides in use. The NRC recognizes that the applicable certification amounts for any one particular licensee may be greater than the amount required to decommission that licensee's facility. In these cases, the NRC encourages a licensee to submit a facility specific decommissioning cost estimate as a basis for financial assurance.

The certification amounts are designed to provide qualifying licensees a method for establishing a basis for the amount of financial assurance needed without devoting the resources needed to develop detailed decommissioning cost estimates. The NRC believes that the certification amounts serve a useful purpose by allowing certain licensees using relatively small quantities of radioactive materials to establish financial assurance in a simple, cost-effective way. At issue is the assurance of timely funding of decommissioning and the cost burden on licensees of providing this assurance. In comparing the relative merits of using a facility-specific decommissioning cost estimate or a certification amount, the tradeoff

[5] For some types of licensees using very large amounts of unsealed radioactive material, a facility-specific cost estimate must be used.

[6] National Income and Product Accounts Tables, Bureau of Economic Analysis, U.S. Department of Commerce.

[7] *Report on Waste Burial Charges,* NUREG–1307, Revision 9, U.S. Nuclear Regulatory Commission, 2000, p.6. Copies of NUREG–1307, Revision 9 are available for inspection or copying for a fee from the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402–9328 (telephone (202)512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

[8] NUREG–1307, Revision 9, p. 6.

[9] "*Revised Analysis of Decommissioning Reference Non-Fuel Cycle Facilities,* draft NUREG/CR–6477, Pacific Northwest National Laboratories, 1996, p. iv.

[10] "Analysis of Decommissioning Certification Amounts for Materials Licensees (Parts 30, 40, and 70)," ICF Consulting, 2000, p. 36.

involved is the benefit of having the amount of financial assurance required more closely track actual decommissioning costs against the additional expense of developing a decommissioning cost estimate. The NRC would also require more resources for review of a financial assurance submission based on a decommissioning cost estimate than for review of a submission based on a certification amount.

Requirement for Updating Decommissioning Cost Estimates

The existing financial assurance regulations do not contain a specific requirement for updating cost estimates in decommissioning funding plans after a certain number of years. Existing regulatory language only refers to ''adjusting cost estimates and associated funding levels periodically over the life of the facility.'' The NRC believes that a more specific requirement is warranted and is proposing to require updated decommissioning cost estimates at least every 3 years. Decommissioning costs, especially waste disposal costs, can change significantly over a relatively short time period. For example, the decommissioning cost estimate for a large materials licensee increased from approximately $40 million in 2001 to over $67 million in 2002. Even requiring updates at least every 3 years would not completely address this problem. However, by requiring an update of decommissioning cost estimates at least every 3 years, the NRC is attempting to prevent a large gap between actual decommissioning costs and licensee decommissioning cost estimates from developing. This proposed change is intended to assure adequate financial coverage of actual decommissioning costs.

Cost Impacts on Licensees

The proposed requirements would have significant cost impacts for large irradiators, waste brokers, and licensees that use the certification amounts. The NRC has only a small number of large irradiators and waste brokers, but approximately 300 NRC materials licensees use the certification amounts. The NRC estimates that additional annual costs of providing financial assurance for all affected licensees would be approximately $1.2 million. Most of this would be attributable to the increase in the certification amounts. In addition, one-time costs of approximately $60K–$250K would result from additional licensees having to prepare decommissioning cost estimates. Also, licensees that base financial assurance on a decommissioning cost estimate would incur the additional costs of having to prepare more frequent decommissioning cost updates to comply with the proposed requirement for updated cost estimates every 3 years. More detailed information on cost impacts is contained in the Regulatory Analysis cited in this notice. The NRC seeks comments from stakeholders on its analysis of the estimated benefits and costs for each class of licensee.

As stated previously, the benefit of the proposed rulemaking is the assurance of adequate funding for timely decommissioning. Updates are needed in the current financial assurance regulations that would decrease the likelihood of inadequate funding for timely decommissioning. The effect of inadequate/untimely funding of decommissioning may have adverse impacts on public health and safety. If a site is not decommissioned due to insufficient funds, there is an increased likelihood of contamination and/or exposure of members of the public. In addition, adequate financial assurance would prevent situations where Federal, State, or local governments bear the cost of decommissioning, rather than site operators. This proposed action would require licensees to provide an additional approximately $80 million in financial assurance coverage.

Implementation

The NRC plans to implement these requirements, if finalized, in a way that minimizes the burden on licensees and regulators. Licensees would be given a reasonable period of time to submit new decommissioning cost estimates and to obtain any additional financial assurance that may be required. The NRC is considering establishing different effective dates for revised financial assurance requirements, depending on the type of licensee, so that new financial assurance submittals would not all be filed at one time. For example, licensees currently using the $750K certification amount would be required to obtain additional financial assurance to comply with the proposed $1,125 certification amount within 12 months of the effective date of a final rule. Licensees currently using the $75K or $150K certification amounts would be required to obtain additional financial assurance to comply with the proposed $113K or $225K certification amounts within 18 months of the effective date of a final rule. In either case, these licensees could choose the option of basing financial assurance on a decommissioning cost estimate.

Licensees that would no longer be able to use the certification amounts, such as large irradiators and waste brokers, would be allowed up to 24 months to submit a decommissioning cost estimate. The NRC encourages public comments on implementation issues and concerns.

Discussion of Proposed Amendments by Section

Section 30.4 Definitions

A definition of the term ''waste broker'' is added.

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning

Paragraph (a) is amended to require licensees possessing large numbers of sealed sources to base financial assurance on a decommissioning funding plan. Amended § 30.35(c)(2) revises the certification amount. A new § 30.35(c)(5) would require waste broker licensees to base financial assurance on a site-specific decommissioning cost estimate. Amended § 30.35(d) would increase the certification amounts by 50 percent—proposed new certification amounts would be $113K, $225K, and $1,125K. Amended § 30.35(e) would require that decommissioning funding plans be updated at least every 3 years.

10 CFR 40.36 Financial Assurance and Recordkeeping

Amended § 40.36(b)(2) would increase the applicable certification amount by 50 percent. Amended § 40.36(c)(2) revises the certification amount. Amended § 40.36(d) would require that decommissioning funding plans be updated at least every 3 years.

10 CFR 70.25 Financial Assurance and Recordkeeping for Decommissioning

Amended § 70.25(c)(2) revises the certification amount. Amended § 70.25(d) would increase the applicable certification amount by 50 percent. Revised § 70.25(e) would require that decommissioning funding plans be updated at least every 3 years.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' that became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into four compatibility categories. In addition, NRC program elements also can be identified as having particular health and safety significance or as being reserved solely to the NRC. The compatibility categories of the financial

assurance regulations are not being changed in the proposed rulemaking.

The sections of 10 CFR parts 30, 40, and 70 dealing with financial assurance that are being changed and their respective compatibility categories are as follows:

Section 30.35 Financial Assurance and Recordkeeping for Decommissioning

Compatibility category D, except D/Health and Safety—paragraphs (a), (b), (d), and (g).

States are given flexibility to allow different dollar amounts based upon jurisdiction and local conditions. The Health and Safety designation for paragraph (g) is warranted because of the requirement for transfer of certain records (*e.g.,* spills or spread of contamination) important for decommissioning to a subsequent licensee at the same facility.

Section 40.36 Financial Assurance and Recordkeeping for Decommissioning

Compatibility category D—paragraphs (c) and (e). Category D/Health and Safety—paragraphs (a), (b), (d), and (f).

States have the flexibility to specify different dollar amounts based on jurisdiction and local conditions. The Health and Safety designation for paragraph (f) is warranted because of the requirement for transfer of certain records (*e.g.,* spills or spread of contamination) important for decommissioning to a subsequent licensee at the same facility.

Section 70.25 Financial Assurance and Recordkeeping for Decommissioning

Compatibility category D except (a) is NRC, and D/Health and Safety—paragraphs (b), (d), and (g).

States have the flexibility to specify different dollar amounts based on jurisdiction and local conditions. Paragraph (a) addresses areas reserved to the NRC because it concerns uranium enrichment facilities and special nuclear materials in quantities sufficient to form a critical mass.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would make revisions to certain financial assurance requirements for materials licensees. Financial assurance requirements are not standards that have been established by any voluntary consensus organizations.

Environmental Assessment and Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this proposed rule because the Commission has concluded on the basis of an environmental assessment that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment. These proposed amendments would revise financial assurance requirements for certain materials licensees. The amendments would not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[11] Actions conducted under this rule would not introduce any impacts on the environment not previously considered by the NRC.

The determination of this environmental assessment is that there will be no significant adverse impact to the quality of the human environment from this action. This action should provide a positive impact by providing additional assurance of timely decommissioning. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this notice of proposed rulemaking, which includes the environmental assessment, to every State Liaison Officer and requested their comments. It may be examined at the NRC Public Document Room, O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies are available from Clark Prichard, telephone (301) 415–6203, e-mail, *cwp@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements contained in 10 CFR parts 30, 40, and 70 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collection requirements have been submitted to the Office of Management and Budget for review and approval. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0009, –0017, and –0020.

The burden to the public for the information collections contained in 10 CFR part 30 is estimated to average 10.4 hours per response, the burden for the information collections contained in 10 CFR part 40 is estimated to average 7.3 hours per response, and the burden for the information collections contained in 10 CFR part 70 is estimated to average 7.5 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet

[11] Copies of NUREG–0586 are available for inspection or copying for a fee from the NRC Public Document Room at O–1F23, 11555 Rockville Pike, Rockville, MD. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017, –0020, and –0009), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by November 6, 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.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the regulatory analysis are available from Clark Prichard, telephone (301) 415–6203, e-mail, cwp@nrc.gov of the Office of Nuclear Material Safety and Safeguards.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. Some licensees affected by this proposed action may fall within the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. However, while the proposed rule would change the financial assurance requirements for these licensees, a licensee may base its financial assurance on a facility-specific decommissioning cost estimate. No licensee would be required to provide financial assurance in excess of what is needed to cover decommissioning costs. Increases in financial assurance amounts required are only the amounts necessary to maintain adequate financial assurance to cover increased decommissioning costs. The regulatory analysis cited for this proposed action contains estimates of cost impacts on different types of licensees.

The NRC is seeking public comment on the potential impact of the proposed rule on small entities. The NRC particularly desires comment from small entities (*i.e.*, small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the proposed regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities that offer comments on how the regulations could be modified should specifically discuss—

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to large organizations in the same business community.

(b) How the proposed regulations could be modified to take into account their differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Backfit Analysis

There are no backfit requirements in 10 CFR Parts 30 and 40, and, in accordance with the effective date note regarding implementation of § 70.76, the provisions of 10 CFR 70.76 on backfitting have not yet gone into effect. Therefore, a backfit analysis is not required. However, the burdens and the benefits associated with this proposed rule are addressed in this notice and in the Regulatory Analysis.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 40, and 70.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec.184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4, a definition is added in alphabetical order to read as follows:

§ 30.4 Definitions.

* * * * *

Waste broker means any licensee that collects or accepts radioactive material from other entities for the purpose of processing, compacting, repackaging, or otherwise preparing it for disposal, or for storage.

* * * * *

3. In § 30.35, paragraphs (a), (c)(2), (d), and (e) are revised and a new paragraph (c)(5) is added to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

(a)(1) Each applicant for a specific license authorizing possession and use

of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in appendix B to part 30 shall submit a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in appendix B to part 30.

(2) Each holder of, or applicant for, any specific license authorizing possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in appendix B to part 30 (or when a combination of isotopes is involved if R, as defined in § 30.35(a)(1), divided by 10^{12} is greater than 1), shall submit a decommissioning funding plan as described in paragraph (e) of this section.

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(5) Waste brokers, *i.e.*, each applicant or holder of a specific license that collects or accepts radioactive material from other entities for the purpose of processing, compaction, repackaging, or otherwise preparing it for disposal, or for storage, must provide financial assurance in an amount based on a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must include the cost of disposal of the maximum amount (curies) of radioactive material permitted by license, and the cost of disposal of the maximum quantity, by volume, of radioactive material present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 10 CFR part 20.

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

greater than 10^4 but less than or equal to 10^5 times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 104 is greater than 1 but R divided by 10^5 is less than or equal to 1)	$1,125,000
greater than 10^3 but less than or equal to 10^4 times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1)	$225,000
greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of appendix B to part 30 in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in § 30.35(a)(1), divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1)	$113,000

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2),83, 84, Pub. L. 95–604, 92Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094,2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.36, paragraphs (b)(2), (c)(2), and (d) are revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(b) * * *

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of $225,000 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument , the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(d) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of

the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

6. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

7. In § 70.25, paragraphs (c)(2), (d), and (e) are revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(c) * * *

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to $1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

* * * * *

(d) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

greater than 10^4 but less than or equal to 10^5 times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.)	$1,125,000
greater than 10^3 but less than or equal to 10^4 times the applicable quantities of appendix B to part 30. (For a combination of isotopes, if R, as defined in § 70.25(a), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.)	$225,000

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

* * * * *

Dated at Rockville, Maryland, this 27th day of September, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–25243 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002–17]

Contribution Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Cancellation of public hearing.

SUMMARY: On August 22, 2002, the Federal Election Commission published proposed changes to its rules relating to contribution limitations and prohibitions under the Federal Election Campaign Act of 1971, as amended. 67 FR 54366 (August 22, 2002). The proposed rules implement provisions of the Bipartisan Campaign Reform Act of 2002. The Notice of Proposed Rulemaking stated that the Commission would hold a public hearing on the proposed rules on October 3, 2002, if the Commission received a sufficient number of requests to testify by September 13, 2002. Although the Commission received a small number of requests to testify, it has decided not to hold public hearings on the proposed rules. Therefore, the Commission is canceling the public hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Mai Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

Dated: October 1, 2002.

Karl J. Sandstrom,

Vice Chairman, Federal Election Commission.

[FR Doc. 02–25400 Filed 10–4–02; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–7]

Proposed Establishment of Class E Airspace; Wasilla, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Wasilla, AK. A Standard Instrument Approach Procedure (SIAP) is being established for the Wasilla Airport. There is no existing Class E airspace associated with the Wasilla Airport. Adoption of this proposal would result in the addition of Class E airspace extending upward from 700 feet above the surface at Wasilla, AK.

DATES: Comments must be received on or before November 21, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–7, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours

in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.CTR.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AAL–7.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by adding Class E airspace at Wasilla, AK. The intended effect of this proposal is to establish that Class E controlled airspace, from 700 feet above the surface, needed to enable IFR operations at Wasilla, AK, to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch (AVN–130) has developed a new SIAP for the Wasilla Airport. The proposed approach from AVN–130 is designated the Area Navigation (Goblal Positioning System) (RNAV GPS) Runway 3, original. It allows Category A aircraft (aircraft approach speed less than 91 knots) and Category B aircraft (aircraft approach speed of 91 knots or more but less than 121 knots) to descend under instrument flight rules (IFR) down to approach minimums of 500 feet above ground level with visibility as low as 1 mile. This SIAP proposal, because of the low approach minimums, would necessitate the establishment of controlled airspace down to the surface, *i.e.,* a surface area, due to the high density of traffic operating to and from the many public and private use airports in close proximity to the Wasilla Airport. A surface area surrounding the Wasilla Airport would require all VFR pilots operating within that surface area to comply with higher visibility and cloud clearance minimums, than exist with the current Class G airspace, and to acquire a Special Visual Flight Rules (SVFR) clearance when the weather is below basic VFR minimums (1,000 ft. ceiling and 3 miles visibility).

It was decided by the FAA Alaskan Region, contrary to the AVN–130 proposal, to propose a slightly different SIAP, which would set the approach minimums for the new RNAV (GPS) Runway 3 SIAP at 1,000 feet above ground level with a visibility requirement of 1¼ miles for Category A aircraft and 1½ miles for Category B aircraft. This proposal would ensure that aircraft executing the new RNAV (GPS) Runway 3 approach remain within controlled airspace while executing this SIAP in IFR conditions until 1,000 feet above the surface, at which time they would proceed visually to the airport. This action would not require establishment of a surface area at this time. Therefore, if adopted, this proposal would establish controlled airspace upward from 700 feet above the surface to allow aircraft executing the SIAP to descend to approach minimums (1,000 ft. altitude and 1¼ or 1½ miles visibility) while remaining within controlled airspace.

New airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Wasilla Airport, excluding that airspace from 700 feet above the surface already established for the Big Lake Airport, would be created by this action. That airspace extending upward from 1,200 feet above the surface will remain the same if this action is taken.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Wasilla, AK [New]

Wasilla Airport, AK
(Lat. 61°34′08″ N, long. 149°32′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wasilla Airport excluding Big Lake Class E Airspace.

* * * * *

Issued in Anchorage, AK, on September 24, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–25311 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–23]

Proposed Establishment of Class E5 Airspace; Tazwell, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Tazwell, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for New Tazwell Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–23, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, PO Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Tazwell, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Tazwell, TN [NEW]

New Tazwell Municipal Aairport, TN
Point in Space Coordinates
(Lat. 36°24′47″ long. 83°30′00″

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°24′47″ long. 83°30′00″W) serving New Tazwell Airport.

* * * * *

Issued in College Park, Georgia, September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25316 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–B–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–22]

Proposed Amendment of Class E5 Airspace; Rockwood, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Rockwood, TN. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Harriman City Hospital, Harriman, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–22, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (MPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Rockwood, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows.

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

* * * * *

ASO TN E5 Rockwood, TN [Revised]

Rockwood Municipal Airport, TN
(Lat. 35°55′20″N, long. 84°41′23″W)

Harriman City Hospital
Point In Space Coordinates
(Lat. 35°56′36″N, long. 84°30′18″W)

That airspace extending upward from 700 feet or more above the surface within a 9.5-mile radius of Rockwood Municipal Airport and within a 6-mile radius of the point in space (lat. 35°56′36″ N, long. 84°30′18″W) serving Harriman City Hospital; excluding that airspace within the Crossville, TN, Class E airspace area.

* * * * *

Issued in College Park, Georgia, September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25315 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–21]

Proposed Establishment of Class E5 Airspace; Newport, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Newport, TN. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Cocke County Baptist Hospital, Newport, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–21, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for the Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Newport, TN. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Newport, TN [NEW]

Cocke County Baptist Hospital, TN
Point in Space Coordinates

(Lat. 36°00′13″ N long. 83°10′53″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°00′13″ N long. 83°10′53″ W) serving Cocke County Baptist Hospital; excluding that airspace within the Knoxville, TN, and the Morristown, TN Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25314 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–20]

Proposed Establishment of Class E5 Airspace; Middlesboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E5 airspace at Middlesboro, KY. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Middlesboro—Bell County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–20, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for the Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made ''Comments to Airspace Docket No. 02–ASO–20.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for the Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E5 airspace at Middlesboro, KY. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend—14 CFR part 71 as follows:

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

1. The authority citation of part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Middlesboro, KY [NEW]

Middlesboro—Bell County Airport, KY
Point in Space Coordinates
(Lat. 36°36′37″ long. 83°43′32″)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 36°36′37″ long. 83°43′32″ W) serving Middlesboro—Bell County Airport.

* * * * *

Issued in College Park, Georgia, on September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25313 Filed 10–04–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–19]

Proposed Amendment of Class E5 Airspace; Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Augusta, GA. A Non-Directional Beacon (NDB) Runway (RWY) 17 Standard Instrument Approach Procedure (SIAP) has been developed for Millen Airport, Millen, GA. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and other Instrument Flight Rules (IFR) operations at Millen Airport. The operating status of the airport would change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–19, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Augusta, GA. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Augusta, GA [REVISED]

Augusta, Bush Field, GA
(Lat. 33°22′12″N, long. 81°57′52″W)
Bushe NDB
(Lat. 33°17′13″N, long. 81°56′49″W)
Daniel Field
(Lat. 33°27′59″N, long. 82°02′21″W)
Burke County Airport
(Lat. 33°02′28″N, long. 82°00′14″W)
Burke County NDB
(Lat. 33°02′33″N, long. 82°00′17″W)
Millen Airport
(Lat. 32°53′37″N, long. 81°57′55″W)
Millen NDB
(Lat. 32°53′41″N, long. 81°58′01″W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Bush Field and within 8 miles west and 4 miles east of the Augusta ILS localizer south course extending from the 8.2-mile radius to 16 miles south of the Bushe NDB, and within a 6.3-mile radius of Daniel Field, and within a 6.2-mile radius of Burke County Airport and within 3.5 miles each side of the 243° bearing from the Burke County NDB extending from the 6.2-mile radius to 7 miles southwest of the NDB, and within a 6.4-mile radius of Millen Airport and within 4 miles east and 8 miles west of the 357° bearing from the Millen NDB extending from the 6.4-mile radius to 16 miles north of the airport.

* * * * *

Issued in College Park, Georgia, on September 27, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–25312 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

[Docket No. FHWA–2002–12229]

RIN 1076–AE17

Indian Reservation Roads Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Bureau of Indian Affairs (BIA) has been conducting information and education meetings with the public as noticed in the **Federal Register** on August 7, 2002 (67 FR 51328). The document of August 7, 2002, noted that all comments were due on or before October 7, 2002. This document extends that comment period to November 7, 2002.

DATES: All comments must be received by November 7, 2002.

ADDRESSES: Mail or hand deliver written comments to the docket number appearing at the top of this document to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 or submit electronically at *http://dms.dot.gov/submit.* All comments should include the docket number appearing in the heading of this document. All comments received will be available for examination and copying at the Dockets Management Facility between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after comments electronically.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, 1849 C Street, NW., MS 4058 MIB, Washington, DC 20240, (202) 208–4359 between 8 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The purpose of the information and educational meetings was to involve affected and interested parties in the administration of the Indian Reservation Roads Program. There has been a series of 12 information and education meetings throughout the country where public participation, in the form of questions and requests for clarification of the proposed rulemaking, was encouraged. Because of the overwhelming public response to the proposed rulemaking, the BIA believes it prudent to extend the comment period to November 7, 2002. This extension will facilitate the maximum direct participation of all interested parties in this important bureau process.

Dated: October 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–25433 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–LY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124667–02]

RIN 1545–BA78

Disclosure of Relative Values of Optional Forms of Benefit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would consolidate the content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans, and would specify requirements for disclosing the relative value of optional forms of benefit that are payable from certain retirement plans in lieu of a qualified joint and survivor annuity. These regulations would affect retirement plan sponsors and administrators, and participants in and beneficiaries of retirement plans. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments, requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for January 14, 2003, at 10 a.m., must be received by January 2, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–124667–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:ITA:RU (REG–124667–02), room 5226, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet

by submitting comments directly to the IRS Internet site at: *www.irs.gov/regs.* The public hearing will be held in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, 202–622–6090; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224. Comments on the collections of information should be received by December 6, 2002. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in § 1.417(a)(3)–1. This information is required by the IRS to comply with the requirements of section 417(a)(3) regarding explanations that must be provided to participants in a qualified plan prior to a waiver of a qualified joint and survivor annuity (QJSA) or a qualified preretirement survivor annuity (QPSA). This information will be used by participants and spouses of participants to determine whether to waive a QJSA or QPSA, and by the IRS to confirm that the plan complies with applicable qualification requirements to avoid adverse tax consequences. The collections of information are mandatory. The respondents are nonprofit institutions.

Estimated total annual reporting burden: 375,000 hours.

The estimated annual burden per respondent varies from .01 to .99 hours, depending on individual circumstances, with an estimated average of .5 hours.

Estimated number of respondents: 750,000.

The estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Background

This document contains proposed amendments to 26 CFR part 1 under section 417(a)(3) of the Internal Revenue Code of 1986 (Code).

A qualified retirement plan to which section 401(a)(11) applies must pay a vested participant's retirement benefit under the plan in the form of a qualified joint and survivor annuity (QJSA), except as provided in section 417. Section 401(a)(11) applies to defined benefit plans, money purchase pension plans, and certain other defined contribution plans. A QJSA is defined in section 417(b) as an annuity for the life of the participant with a survivor annuity for the life of the spouse (if the participant is married) that is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity that is payable during the joint lives of the participant and the spouse. Under section 417(b)(2), a QJSA for a married participant generally must be the actuarial equivalent of the single life annuity benefit payable for the life of the participant. However, a plan is permitted to subsidize the QJSA for a married participant. If the plan fully subsidizes the QJSA for a married participant so that failure to waive the QJSA would not result in reduced payments over the life of the participant compared to the single life annuity benefit, then the plan need not provide an election to waive the QJSA. *See* section 417(a)(5).

For a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. *See* § 1.401(a)-20, Q&A–16. Further, the anti-forfeiture rules of section 411(a) prohibit a participant's benefit under a defined benefit plan from being satisfied through payment that is actuarially less valuable than the value of the participant's accrued benefit expressed in the form of an annual benefit commencing at normal retirement age. These determinations must be made using reasonable actuarial assumptions. However, *see* § 1.417(e)–1(d) for actuarial assumptions required for use in certain present value calculations.

If a plan provides a subsidy for one optional form of benefit (*i.e.*, the payments under an optional form of benefit have an actuarial present value that is greater than the actuarial present value of the accrued benefit), there is no requirement to extend a similar subsidy (or any subsidy) to every other optional form of benefit. Thus, for example, a participant might be entitled to receive a single-sum distribution upon early retirement that does not reflect any early retirement subsidy in lieu of a QJSA that reflects a substantial early retirement subsidy. As a further example, a participant might be entitled to receive a single-sum distribution at normal retirement age in lieu of a QJSA that is subsidized as described in section 417(a)(5).

Section 417(a) provides rules under which a participant (with spousal consent) may waive payment of the participant's benefit in the form of a QJSA. Section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date (and consistent with such regulations as the Secretary may prescribe) a written explanation of the terms and conditions of the QJSA, the participant's right to make, and the effect of, an election to waive the QJSA form of benefit, the rights of the participant's spouse, and the right to revoke (and the effect of the revocation of) an election to waive the QJSA form of benefit.

Section 205 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829) as subsequently amended, provides parallel rules to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code. In particular, section 205(a)(3) of ERISA provides a parallel rule to section 417(a)(3) of the Code. Treasury regulations issued under section 417(a)(3) of the Code apply as

well for purposes of section 205(a)(3) of ERISA.

Regulations governing the requirements for waiver of a QJSA were published in the **Federal Register** on August 19, 1988 (TD 8219; 53 FR 31837). Section 1.401(a)–20, Q&A–36, provides rules for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Section 1.401(a)–20, Q&A–36, requires that such a written explanation must contain a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (*e.g.*, the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms). In addition, § 1.401(a)–20, Q&A–36, provides that the written explanation must comply with the requirements set forth in § 1.401(a)–11(c)(3). Section 1.401(a)–11(c)(3) was issued prior to the enactment of section 417, and provides rules relating to written explanations that were required prior to a participant's election of a preretirement survivor annuity or election to waive a joint and survivor annuity. Section 1.401(a)–11(c)(3)(i)(C) provides that such a written explanation must contain a general explanation of the relative financial effect of these elections on a participant's annuity.

In addition, under section 411 and § 1.411(a)–11(c), so long as a benefit is immediately distributable (within the meaning of § 1.411(a)–11(c)(4)), a participant must be informed of his or her right to defer that distribution. This requirement is independent of the section 417 requirements addressed in these proposed regulations.

Concerns have been expressed that, in certain cases, the information provided to participants under section 417(a)(3) regarding the available distribution forms does not adequately enable them to compare those distribution forms without professional advice. In particular, participants who are eligible for both subsidized annuity distributions and unsubsidized single-sum distributions may be receiving notices that do not adequately explain the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of annuity payments may not adequately enable those participants to make an informed comparison of the relative values of those distribution forms, even if the interest rate used to derive the single sum is disclosed. Furthermore, questions have been raised as to how the relative values of optional forms of benefit are required to be expressed under current regulations. Accordingly, these proposed regulations are being issued to propose disclosure requirements that would enable participants to compare the relative values of the available distribution forms using more readily understandable information.

Explanation of Provisions

The proposed regulations would consolidate the content requirements applicable to explanations of QJSAs and QPSAs under section 417(a)(3), and would specify rules for disclosing the relative value of optional forms of benefit as part of the QJSA explanation. Similar to the requirements in the current regulations, the required explanation must contain, with respect to each of the optional forms of benefit presently available to the participant, a description of the optional form of benefit, a description of the eligibility conditions for the optional form of benefit, a description of the financial effect of electing the optional form of benefit, a description of the relative value of the optional form of benefit, and a description of any other material features of the optional form of benefit. Further, as under the current regulations, the QJSA explanation would be permitted to be made either by providing the participant with information specific to the participant, or by providing the participant with generally applicable information and offering the participant the opportunity to request additional information specifically applicable to the participant with respect to any optional forms of benefit available to the participant. The proposed regulations would clarify that a defined contribution plan is not required to provide a description of the relative values of optional forms of benefit compared to the value of the QJSA.

The proposed regulations would provide additional guidance regarding the required description of the relative values of optional forms of benefit compared to the value of the QJSA and the content of the required disclosure of relative values. Under the proposed regulations, the description of the relative value of an optional form of benefit compared to the value of the QJSA must be expressed in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. In order to make this comparison, the benefit under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that both are expressed in the same form. The proposed regulations give several examples of techniques that may be used for this comparison: expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA; stating the amount of an annuity payable at the same time and under the same conditions as the QJSA that is the actuarial equivalent of the optional form of benefit; or stating the actuarial present value of both the QJSA and the optional form of benefit. For purposes of providing a description of the relative value of an optional form of benefit compared to the value of the QJSA (and also for purposes of comparing the financial effect of the distribution forms available to a participant), a plan would be permitted to provide reasonable estimates (*e.g.*, estimates based on data as of an earlier date than the annuity starting date or an estimate of the spouse's age). If estimates are used, the participant has a right to a more precise calculation upon request.

Since disclosing the relative value of every optional form of benefit regardless of the degree of subsidy may be too burdensome, and may provide participants with information that appears more precise than is warranted based on the inexact nature of the actuarial assumptions used, the proposed regulations would provide some ways to simplify this disclosure of relative values of optional forms of benefit. One way in which this disclosure would be simplified is through a banding rule under which two or more optional forms of benefit that have approximately the same value could be grouped for purposes of disclosing relative value. Under these proposed regulations, two or more optional forms of benefit would be treated as having approximately the same value if those optional forms of benefit vary in relative value in comparison to the value of the QJSA by 5 percentage points or less when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA. For such a group of optional forms of benefit, the requirement relating to disclosing the relative value of each optional form of benefit compared to the value of the QJSA could be satisfied by disclosing the relative value of any one of the

optional forms in the group compared to the value of the QJSA, and disclosing that the other optional forms of benefit in the group are of approximately the same value. If a single-sum distribution is included in such a group of optional forms of benefit, the single-sum distribution must be the distribution form that is used for purposes of this comparison. The relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA may be described by stating that those optional forms of benefit are of approximately equal value to the value of the QJSA. Thus, these rules would permit a plan that provides no subsidized forms of benefit to state the comparison of relative values simply by stating that all distribution forms are approximately equal in value to the QJSA.

Another way in which this disclosure may be simplified is through the use of representative values: if, under the banding rule, two or more optional forms of benefit are grouped, a representative relative value for all of the grouped options could be used as the approximate relative value for all of the grouped options, in lieu of using the relative value of one of the optional forms of benefit in the group. For this purpose, a representative relative value is any relative value that is not less than the relative value of the member of the group of optional forms of benefit with the lowest relative value and is not greater than the relative value of the member of that group with the highest relative value when measured on a consistent basis. For example, if three optional forms have relative values of 87.5%, 89%, and 91% of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90% of the value of the QJSA.

The proposed regulations would also permit the disclosure of the financial effect and relative value of optional forms of benefit to be made in the form of generally applicable information rather than information specific to the participant, provided that information specific to the participant regarding the optional form of benefit must be furnished at the participant's request. Thus, under the proposed regulations, in lieu of providing a QJSA explanation that describes each optional form that is presently available to the participant, the generalized QJSA explanation need only reflect the generally available optional forms of benefits, along with a reference to where a participant can obtain the information for any other optional forms of benefits (such as optional forms from prior benefit structures for limited groups of employees) that are presently available to the participant.

With respect to the generally available optional forms of benefits, in lieu of providing a statement of financial effect and relative value comparison that is specific to the participant, the generalized QJSA explanation is permitted to include a chart or other comparable device showing a series of examples of financial effects and relative value comparisons for hypothetical participants. The examples in the chart should reflect a representative range of ages for the hypothetical participants and use reasonable assumptions for the age of the hypothetical participant's spouse and any other variable that affects the financial effect, or relative value, of the optional form of benefit. The chart must be accompanied by a general statement describing the effect of significant variations between the assumed ages or other variables on the financial effect of electing the optional form of benefit and the comparison of the relative value of the optional form of benefit to the value of the QJSA. A generalized QJSA explanation that includes this chart must also include the amount payable to the participant under the normal form of benefit, either at normal retirement age, or payable immediately. In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect along with a comparison of relative values that is specific to the participant for one or more presently available optional forms of benefit, and a description of how a participant may obtain this additional information. Thus, with respect to those optional forms of benefit for which additional information is requested, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit.

The proposed regulations would provide rules governing the actuarial assumptions to be used in comparing the value of an optional form of benefit to the QJSA. If an optional form of benefit is subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d) (*e.g.*, a single-sum distribution), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit). All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest rates and mortality tables that are reasonable and that are applied uniformly for this purpose with respect to all such other optional forms payable to the participant. The uniform interest and mortality assumptions should be used regardless of whether those assumptions are actually used to determine the amount of benefit payments under any particular optional form.

The proposed regulations would also require disclosure of information to help a participant understand the significance of a disclosure of the relative value of an optional form of benefit. Under the proposed regulations, the notice would be required to provide an explanation of the concept of relative value. Specifically, the notice would be required to explain that the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, that the relative value comparison is made by converting the value of the optional forms of benefit currently available to a common form (such as the QJSA or single-sum distribution), and that this conversion uses interest and life expectancy assumptions.

Under the proposed regulations, a required numerical comparison of the value of the optional form of benefit to the value of the QJSA under the plan generally would be required to disclose the interest rate that is used to develop a required numerical comparison. However, if all optional forms of benefit are permitted to be treated as having approximately the same value after application of the banding rule described above, then the plan would not be required to disclose the interest rate used to develop a required numerical comparison to the QJSA for optional form of benefit that is not subject to the requirements of section 417(e)(3). In addition, the proposed regulations would require the plan to provide a general statement that all numerical comparisons of relative value provided are based on average life expectancies, and that the relative value of payments ultimately made under an annuity optional form of benefit will depend on actual longevity.

Under the proposed regulations, both the QPSA explanation and the QJSA explanation must be written in a manner calculated to be understood by the average participant. A plan may wish to provide additional information beyond the minimum information that

would be required under these proposed regulations, in order to help an employee to evaluate the form of benefit that would be most desirable under the employee's individual circumstances. For example, the plan may wish to add further explanation of the effects of ill health or other factors influencing expected longevity on the desirability of electing annuity forms of distribution.

The proposed regulations contain rules regarding the method for providing the QJSA explanation and the QPSA explanation. Under the proposed regulations, these explanations must be written explanations. First class mail to the last known address of the party is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, the posting of the explanation is not considered provision of the section 417(a)(3) explanation.

These proposed regulations do not address the extent to which the QJSA explanation or the QPSA explanation can be provided through electronic media. The IRS and the Treasury Department are considering the extent to which the QJSA explanation and the QPSA explanation, as well as other notices under the various Internal Revenue Code requirements relating to qualified retirement plans, can be provided electronically, taking into account the effect of the Electronic Signatures in Global and National Commerce Act (ESIGN), Public Law 106–229, 114 Stat. 464 (2000). The IRS and the Treasury Department anticipate issuing proposed regulations regarding these issues, and invite comments on these issues.

Proposed Effective Date

The regulations are proposed to be applicable to QJSA explanations with respect to distributions with annuity starting dates on or after January 1, 2004, and to QPSA explanations provided on or after January 1, 2004.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few, if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs.* All comments will be available for public inspection and copying. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand or to implement.

A public hearing has been scheduled for January 14, 2002, at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 2, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Paragraph (c)(3) of § 1.401(a)–11 is revised to read as follows:

§ 1.401(a)–11 Qualified joint and survivor annuities.

* * * * *

(c) * * *

(3) *Information to be provided by plan.* For rules regarding the information required to be provided with respect to the election to waive a QJSA or a QPSA, see § 1.417(a)(3)–1.

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Par. 3. A–36 of § 1.401(a)–20 is revised to read as follows:

§ 1.401(a)–20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

A–36. For rules regarding the explanation of QPSAs and QJSAs required under section 417(a)(3), see § 1.417(a)(3)–1.

* * * * *

Par. 4. Section 1.417(a)(3)–1 is added to read as follows:

§ 1.417(a)(3)–1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

(a) *Written explanation requirement*—(1) *General rule.* A plan meets the survivor annuity requirements of section 401(a)(11) only if the plan meets the requirements of section 417(a)(3) and this section regarding the written explanation required to be provided a participant with respect to a QJSA or a QPSA. A written explanation required to be provided to a participant with respect to either a QJSA or a QPSA under section 417(a)(3) and this section is referred to in this section as a section 417(a)(3) explanation. See § 1.401(a)–20, Q&A–37, for exceptions to the written explanation requirement in the case of a fully subsidized QPSA or QJSA, and § 1.401(a)–20, Q&A–38, for the

definition of a fully subsidized QPSA or QJSA.

(2) *Time for providing section 417(a)(3) explanation*—(i) *QJSA explanation.* See § 1.417(e)–1(b)(3)(ii) for rules governing the timing of the QJSA explanation.

(ii) *QPSA explanation.* See § 1.401(a)–20, Q&A–35, for rules governing the timing of the QPSA explanation.

(3) *Required method for providing section 417(a)(3) explanation.* A section 417(a)(3) explanation must be a written explanation. First class mail to the last known address of the participant is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, the posting of the explanation is not considered provision of the section 417(a)(3) explanation.

(4) *Understandability.* A section 417(a)(3) explanation must be written in a manner calculated to be understood by the average participant.

(b) *Required content of section 417(a)(3) explanation*—(1) *Content of QPSA explanation.* The QPSA explanation must contain a general description of the QPSA, the circumstances under which it will be paid if elected, the availability of the election of the QPSA, and, except as provided in paragraph (d)(3) of this section, a description of the financial effect of the election of the QPSA on the participant's benefits (*i.e.*, an estimate of the reduction to the participant's estimated normal retirement benefit that would result from an election of the QPSA).

(2) *Content of QJSA explanation.* The QJSA explanation must satisfy either paragraph (c) or paragraph (d) of this section. Under paragraph (c) of this section, the QJSA explanation must contain certain specific information relating to the benefits available under the plan to the particular participant. Alternatively, under paragraph (d) of this section, the QJSA explanation can contain generally applicable information in lieu of specific participant information, provided that the participant has the right to request additional information regarding the participant's benefits under the plan.

(c) *Participant-specific information required to be provided*—(1) *In general.* A QJSA explanation satisfies this paragraph (c) if it provides the following information with respect to each of the optional forms of benefit presently available to the participant—

(i) A description of the optional form of benefit;

(ii) A description of the eligibility conditions for the optional form of benefit;

(iii) A description of the financial effect of electing the optional form of benefit (*i.e.*, the amount payable under the form of benefit);

(iv) In the case of a defined benefit plan, a description of the relative value of the optional form of benefit compared to the value of the QJSA, in the manner described in paragraph (c)(2) of this section; and

(v) A description of any other material features of the optional form of benefit.

(2) *Requirement for numerical comparison of relative values*—(i) *In general.* The description of the relative value of an optional form of benefit compared to the value of the QJSA under paragraph (c)(1)(iv) of this section must be expressed to the participant in a manner that provides a meaningful comparison of the relative economic values of the two forms of benefit without the participant having to make calculations using interest or mortality assumptions. Thus, in performing the calculations necessary to make this comparison, the benefits under one or both optional forms of benefit must be converted, taking into account the time value of money and life expectancies, so that the values of both optional forms of benefit are expressed in the same form. For example, such a comparison may be expressed to the participant using any of the following techniques—

(A) Expressing the actuarial present value of the optional form of benefit as a percentage or factor of the actuarial present value of the QJSA;

(B) Stating the amount of the annuity that is the actuarial equivalent of the optional form of benefit and that is payable at the same time and under the same conditions as the QJSA; or

(C) Stating the actuarial present value of both the optional form of benefit and the QJSA.

(ii) *Simplified presentations permitted*—(A) *Grouping of certain optional forms.* Two or more optional forms of benefit that have approximately the same value may be grouped for purposes of a required numerical comparison described in this paragraph (c)(2). For this purpose, two or more optional forms of benefit have approximately the same value if those optional forms of benefit vary in relative value in comparison to the value of the QJSA by 5 percentage points or less when the relative value comparison is made by expressing the actuarial present value of each of those optional forms of benefit as a percentage of the actuarial present value of the QJSA. For such a group of optional forms of benefit, the requirement relating to disclosing the relative value of each optional form of benefit compared to the value of the QJSA can be satisfied by disclosing the relative value of any one of the optional forms in the group compared to the value of the QJSA, and disclosing that the other optional forms of benefit in the group are of approximately the same value. If a single-sum distribution is included in such a group of optional forms of benefit, the single-sum distribution must be the distribution form that is used for purposes of this comparison. In addition, the relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value.

(B) *Representative relative value for grouped optional forms.* If, in accordance with paragraph (c)(2)(ii)(A) of this section, two or more optional forms of benefits are grouped, the relative values for all of the optional forms of benefit in the group can be stated using a representative relative value as the approximate relative value for the entire group. For this purpose, a representative relative value is any relative value that is not less than the relative value of the member of the group of optional forms of benefit with the lowest relative value and is not greater than the relative value of the member of that group with the highest relative value when measured on a consistent basis. For example, if three optional forms have relative values of 87.5%, 89%, and 91% of the value of the QJSA, all three optional forms can be treated as having a relative value of approximately 90% of the value of the QJSA. As required under paragraph (c)(2)(ii)(A) of this section, if a single-sum distribution is included in the group of optional forms of benefit, the 90% relative factor of the value of the QJSA must be disclosed as the approximate relative value of the single sum, and the other forms can be described as having the same approximate value as the single sum.

(iii) *Actuarial assumptions used to determine relative values.* For the purpose of providing a numerical comparison of the value of an optional form of benefit to the value of the immediately commencing QJSA, the following rules apply—

(A) If an optional form of benefit is subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d), any comparison of the value of the optional form of benefit to the value of the QJSA must be made using the applicable

mortality table and the applicable interest rate as defined in § 1.417(e)–1(d)(2) and (3) (or, at the option of the plan, another reasonable interest rate and reasonable mortality table used under the plan to calculate the amount payable under the optional form of benefit); and

(B) All other optional forms of benefit payable to the participant must be compared with the QJSA using a single set of interest and mortality assumptions that are reasonable and that are applied uniformly with respect to all such optional forms payable to the participant (regardless of whether those assumptions are actually used under the plan for purposes of determining benefit payments).

(iv) *Required disclosure of assumptions*—(A) *Explanation of concept of relative value.* The notice must provide an explanation of the concept of relative value, communicating that the relative value comparison is intended to allow the participant to compare the total value of distributions paid in different forms, that the relative value comparison is made by converting the value of the optional forms of benefit presently available to a common form (such as the QJSA or a single-sum distribution), and that this conversion uses interest and life expectancy assumptions. The explanation of relative value must include a general statement that all comparisons provided are based on average life expectancies, and that the relative value of payments ultimately made under an annuity optional form of benefit will depend on actual longevity.

(B) *Disclosure of interest assumptions.* A required numerical comparison of the value of the optional form of benefit to the value of the QJSA under the plan is required to disclose the interest rate that is used to develop the comparison. If all optional forms of benefit are permitted to be grouped under paragraph (c)(2)(ii)(A) of this section, then the requirement of this paragraph (c)(2)(iv)(B) does not apply for any optional form of benefit not subject to the requirements of section 417(e)(3) and § 1.417(e)–1(d)(3).

(3) *Permitted estimates of financial effect and relative value*—(i) *General rule.* For purposes of providing a description of the financial effect of the distribution forms available to a participant as required under paragraph (c)(1)(iii) of this section, and for purposes of providing a description of the relative value of an optional form of benefit compared to the value of the QJSA for a participant as required under paragraph (c)(1)(iv) of this section, the plan is permitted to provide reasonable estimates (*e.g.*, estimates based on data as of an earlier date than the annuity starting date, a reasonable assumption for the age of the participant's spouse, or, in the case of a defined contribution plan, reasonable estimates of amounts that would be payable under a purchased annuity contract), including reasonable estimates of the applicable interest rate under section 417(e)(3).

(ii) *Right to more precise calculation.* If a QJSA notice uses a reasonable estimate under paragraph (c)(3)(i) of this section, the QJSA explanation must identify the estimate and explain that the plan will, upon the request of the participant, provide a more precise calculation and the plan must provide the participant with a more precise calculation if so requested. Thus, for example, if a plan provides an estimate of the amount of the QJSA that is based on a reasonable assumption concerning the age of the participant's spouse, the participant can request a calculation that takes into account the actual age of the spouse, as provided by the participant.

(iii) *Revision of prior information.* If a more precise calculation described in paragraph (c)(3)(ii) of this section materially changes the relative value of an optional form compared to the value of the QJSA, the revised relative value of that optional form must be disclosed, regardless of whether the financial effect of selecting the optional form is affected by the more precise calculation.

(4) *Special rules for disclosure of financial effect for defined contribution plans.* For a written explanation provided by a defined contribution plan, a description of financial effect required by paragraph (c)(1)(iii) of this section with respect to an annuity form of benefit must include a statement that the annuity will be provided by purchasing an annuity contract from an insurance company with the participant's account balance under the plan. If the description of the financial effect of the optional form of benefit is provided using estimates rather than by assuring that an insurer is able to provide the amount disclosed to the participant, the written explanation must also disclose this fact.

(d) *Substitution of generally applicable information for participant information in the section 417(a)(3) explanation*—(1) *Forms of benefit available.* In lieu of providing the information required under paragraphs (c)(1)(i) through (v) of this section for each optional form of benefit presently available to the participant as described in paragraph (c) of this section, the QJSA explanation may contain the information required under paragraphs (c)(1)(i) through (v) of this section for the QJSA and each other optional form of benefit generally available under the plan, along with a reference to where a participant may readily obtain the information required under paragraphs (c)(1)(i) through (v) of this section for any other optional forms of benefit that are presently available to the participant.

(2) *Financial effect and comparison of relative values*—(i) *General rule.* In lieu of providing a statement of the financial effect of electing an optional form of benefit as required under paragraph (c)(1)(iii) of this section, or a comparison of relative values as required under paragraph (c)(1)(iv) of this section, based on the actual age and benefit of the participant, the QJSA explanation is permitted to include a chart (or other comparable device) showing the financial effect and relative value of optional forms of benefit in a series of examples specifying the amount of the optional form of benefit payable to a hypothetical participant at a representative range of ages and the comparison of relative values at those same representative ages. Each example in this chart must show the financial effect of electing the optional form of benefit pursuant to the rules of paragraph (c)(1)(iii) of this section, and a comparison of the relative value of the optional form of benefit to the value of the QJSA pursuant to the rules of paragraph (c)(2) of this section, using reasonable assumptions for the age of the hypothetical participant's spouse and any other variables that affect the financial effect, or relative value, of the optional form of benefit. The requirement to show the financial effect of electing an optional form can be satisfied through the use of other methods (*e.g.*, expressing the amount of the optional form as a percentage or a factor of the amount payable under the normal form of benefit), provided that the method provides sufficient information so that a participant can determine the amount of benefits payable in the optional form. The chart or other comparable device must be accompanied by the disclosures described in paragraph (c)(2)(iv) of this section explaining the concept of relative value and disclosing certain interest assumptions. In addition, the chart or other comparable device must be accompanied by a general statement describing the effect of significant variations between the assumed ages or other variables on the financial effect of electing the optional form of benefit and the comparison of the relative value of

the optional form of benefit to the value of the QJSA.

(ii) *Actual benefit must be disclosed.* The generalized notice described in this paragraph (d)(2) will satisfy the requirements of paragraph (b)(2) of this section only if the notice includes either the amount payable to the participant under the normal form of benefit or the amount payable to the participant under the normal form of benefit adjusted for immediate commencement. For this purpose, the normal form of benefit is the form under which payments due to the participant under the plan are expressed under the plan, prior to adjustments for form of benefit. For example, assuming that a plan's benefit accrual formula is expressed as a straight life annuity, the generalized notice must provide the amount of either the straight life annuity commencing at normal retirement age or the straight life annuity commencing immediately.

(iii) *Ability to request additional information.* The generalized notice described in this paragraph (d)(2) must be accompanied by a statement that includes an offer to provide, upon the participant's request, a statement of financial effect and a comparison of relative values that is specific to the participant for any presently available optional form of benefit, and a description of how a participant may obtain this additional information.

(3) *Financial effect of QPSA election.* In lieu of providing a specific description of the financial effect of the QPSA election, the QPSA explanation may provide a general description of the financial effect of the election. Thus, for example, the description can be in the form of a chart showing the reduction to a hypothetical participant's normal retirement benefit at a representative range of participant ages as a result of the QPSA election (using a reasonable assumption for the age of the hypothetical participant's spouse relative to the age of the hypothetical participant). In addition, this chart must be accompanied by a statement that includes an offer to provide, upon the participant's request, an estimate of the reduction to the participant's estimated normal retirement benefit, and a description of how a participant may obtain this additional information.

(4) *Additional information required to be furnished at the participant's request*—(i) *Explanation of QJSA.* If, as permitted under paragraphs (d)(1) and (2) of this section, the content of a QJSA explanation does not include all the items described in paragraph (c) of this section, then, upon a timely request from the participant for any of the information required under paragraphs (c)(1)(i) through (v) of this section for one or more presently available optional forms (including a request for all optional forms presently available to the participant), the plan must furnish the information required under paragraphs (c)(1)(i) through (v) of this section with respect to those optional forms. Thus, with respect to those optional forms of benefit, the participant must receive a QJSA explanation specific to the participant that is based on the participant's actual age and benefit. In addition, the plan must comply with paragraph (c)(3)(iii) of this section.

(ii) *Explanation of QPSA.* If, as permitted under paragraph (d)(3) of this section, the content of a QPSA explanation does not include all the items described in paragraph (b)(1) of this section, then, upon a timely request from the participant for an estimate of the reduction to the participant's estimated normal retirement benefit that would result from a QPSA election, the plan must furnish such an estimate.

(e) *Examples.* The following examples illustrate the application of this section. Solely for purposes of these examples, the applicable interest rate that applies to any distribution that is subject to the rules of section 417(e)(3) is assumed to be 5½%, and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) is assumed to be the table that applies as of January 1, 2003. In addition, solely for purposes of these examples, assume that a plan which determines actuarial equivalence using 6% interest and the applicable mortality table under section 417(e)(3) and § 1.417(e)–1(d)(2) that applies as of January 1, 1995, is using reasonable actuarial assumptions. The examples are as follows:

Example 1. (i) Participant M participates in Plan A, a qualified defined benefit plan. Under Plan A, the QJSA is a joint and 100% survivor annuity, which is actuarially equivalent to the single life annuity determined using 6% interest and the section 417(e)(3) applicable mortality table that applies as of January 1, 1995. On January 1, 2004, M will terminate employment at age 55. When M terminates employment, M will be eligible to elect an unreduced early retirement benefit, payable as either a life annuity or the QJSA. M will also be eligible to elect a single-sum distribution equal to the actuarial present value of the single life annuity payable at normal retirement age (age 65), determined using the applicable mortality table and the applicable interest rate under section 417(e)(3).

(ii) Participant M is provided with a QJSA explanation that describes the single life annuity, the QJSA, and single-sum distribution option under the plan, and any eligibility conditions associated with these options. The explanation indicates that, if Participant M commenced benefits at age 55 and had a spouse age 55, the monthly benefit under an immediately commencing single life annuity is $3,000, the monthly benefit under the QJSA is estimated to be 89.96% of the monthly benefit under the immediately commencing single life annuity or $2,699, and the single sum is estimated to be 74.7645 times the monthly benefit under the immediately commencing single life annuity or $224,293.

(iii) The QJSA explanation indicates that the single life annuity and the QJSA are of approximately the same value, but that the single-sum option is equivalent in value to a QJSA of $1,215. (This amount is 45% of the value of the QJSA at age 55 ($1,215 divided by 89.96% of $3,000 equals 45%).) The explanation states that the relative value comparison converts the value of the single life annuity and the single-sum options to the value of each if paid in the form of the QJSA and that this conversion uses interest and life expectancy assumptions. The explanation specifies that the calculations relating to the single-sum distribution were prepared using 5.5% interest and average life expectancy, that the other calculations were prepared using a 6% interest rate and that the relative value of actual annuity payments for an individual can vary depending on how long the individual and spouse live. The explanation notes that the calculation of the QJSA assumed that the spouse was age 55, that the amount of the QJSA will depend on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a more precise calculation to the participant taking into account the spouse's actual age.

(iv) Participant M requests a more precise calculation of the financial effect of choosing a QJSA, taking into the actual age of Participant M's spouse. Based on the fact that M's spouse is age 50, Plan A determines that the monthly payments under the QJSA are 87.62% of the monthly payments under the single life annuity, or $2,628.60 per month, and provides this information to M. Plan A is not required to provide an updated calculation of the relative value of the single sum because the value of single sum continues to be 45% of the value of the QJSA.

Example 2. (i) The facts are the same as in *Example 1*, except that under Plan A, the single-sum distribution is determined as the actuarial present value of the immediately commencing single life annuity. In addition, Plan A provides a joint and 75% survivor annuity that is reduced from the single life annuity and that is the QJSA under Plan A. For purposes of determining the amount of the QJSA, the reduction is only half of the reduction that would normally apply under the actuarial assumptions specified in Plan A for determining actuarial equivalence of optional forms.

(ii) In lieu of providing information specific to Participant M in the QJSA notice as set forth in paragraph (c) of this section, Plan A satisfies the QJSA explanation

requirement in accordance with paragraph (d)(2) of this section by providing M with a statement that M's monthly benefit under an immediately commencing single life annuity (which is the normal form of benefit under Plan A, adjusted for immediate commencement) is $3,000, along with the following chart showing the financial effect and the relative value of the optional forms of benefit compared to the QJSA for a hypothetical participant with a $1,000 benefit and a spouse who is three years younger than the participant. For each optional form generally available under the plan, the chart shows the financial effect and the relative value, using the grouping rules of paragraph (c)(2)(ii) of this section. Separate charts are provided for ages 55, 60, and 65.

Optional form	Amount of distribution per $1,000 of immediate single life annuity	Relative value
Age 55 Commencement:		
Life Annuity	$1,000 per month	Approximately the same value as the OJSA.
QJSA (joint and 75% survivor annuity)	$956 per month	n/a.
Joint and 100% survivor annuity	$886 per month	Approximately the same value as the QJSA.
Lump sum	$165,959	Approximately the same value as the QJSA.
Age 60 Commencement:		
Life Annuity	$1,000 per month	Approximately 94% of the value of the QJSA.
QJSA (joint and 75% survivor annuity)	$945 per month	n/a.
Joint and 100% survivor annuity	$859 per month	Approximately 94% of the value of the QJSA.
Lump sum	$151,691	Approximately the same value as the QJSA.
Age 65 Commencement:		
Life Annuity	$1,000 per month	Approximately 93% of the value of the QJSA.
QJSA (joint and 75% survivor annuity)	$932 per month	n/a.
Joint and 100% survivor annuity	$828 per month	Approximately 93% of the value of the QJSA.
Lump sum	$135,759	Approximately 93% of the value of the QJSA.

(iii) The chart disclosing the financial effect and relative value of the optional forms specifies that the calculations were prepared assuming that the spouse is three years younger than the participant, that the calculations relating to the single-sum distribution were prepared using 5.5% interest and average life expectancy, that the other calculations were prepared using a 6% interest rate, and that the relative value of actual payments for an individual can vary depending on how long the individual and spouse live. The explanation states that the relative value comparison converts the QJSA, the single life annuity, the joint and 100% survivor annuity, and the single-sum options to an equivalent present value and that this conversion uses interest and life expectancy assumptions. The explanation notes that the calculation of the QJSA depends on the actual age of the spouse (for example, annuity payments will be significantly lower if the spouse is significantly younger than the participant), and that the amount of the single-sum payment will depend on the interest rates that apply when the participant actually takes a distribution. The explanation also includes an offer to provide a calculation specific to the participant upon request.

(iv) Participant M requests information regarding the amounts payable under the QJSA, the joint and 100% survivor annuity, and the single sum.

(v) Based on the information about the age of Participant M's spouse, Plan A determines that M's QJSA is $2,856.30 per month, the joint and 100% survivor annuity is $2,628.60 per month, and the single sum is $497,876. The actuarial present value of the QJSA (determined using the 5.5% interest and the section 417(e)(3) applicable mortality table, the actuarial assumptions required under section 417) is $525,091. Accordingly, the value of the single-sum distribution available to M at January 1, 2004, is 94.8% of the actuarial present value of the QJSA. In addition, the actuarial present value of the life annuity and the 100% joint and survivor annuity are 95.0% of the actuarial present value of the QJSA.

(vi) Plan A provides M with a QJSA explanation that incorporates these more precise calculations of the financial effect and relative value of the optional forms for which M requested information.

(f) *Effective date*. This section applies to QJSA explanations provided with respect to distributions with annuity starting dates on or after January 1, 2004, and to QPSA explanations provided on or after January 1, 2004.

§ 1.417(e)–1 [Amended]

Par. 5. In § 1.417(e)–1, paragraph (b)(2) is amended by removing the language ''§ 1.401(a)–20 Q&A–36'' and adding ''§ 1.417(a)(3)–1'' in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–25338 Filed 10–4–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 187–0365b; FRL–7385–4]

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 (SCAQMD) portion of the California State Implementation Plan (SIP). This revision regulates the emission of volatile organic compounds (VOC) from wastewater systems. We are proposing to approve a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by November 6, 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.

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

Air and Radiation Docket and Information Center (6102T), U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SCAQMD Rule 1176. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this

SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 30, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25300 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV054–6022b; FRL–7382–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Nitrogen Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing ambient air quality standards for nitrogen dioxide, equivalent to the national primary and secondary ambient air quality standards established by EPA. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at *Lewis.Janice@epa.gov.* Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish ambient air quality standards for nitrogen dioxide. The revision consists of the adoption of Rule 45CSR12—Ambient Air Quality Standard for Nitrogen Dioxide. For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–25295 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV048 –6020b; FRL–7381–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia, Regulation To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia to prevent and control air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of West Virginia's Regulation to Prevent and Control Air Pollution From the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 13, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–25292 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV052–6023b; FRL–7388–8]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Carbon Monoxide and Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing reference test methods for measuring carbon monoxide concentrations in the ambient air, equivalent to the national primary and secondary ambient air quality standards established by EPA. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at *Lewis.Janice@epa.gov.* Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish reference test methods for measuring ambient air concentrations for carbon monoxide. The revision consists of the adoption of Rule 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone. For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 02–25284 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0369b; FRL–7387–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) and Carbon Monoxide (CO) emissions from boilers, steam generators, and process heaters in petroleum refineries. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve a local rule to regulate these emission sources.

DATES: Any comments on this proposal must arrive by November 6, 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 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

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

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: BAAQMD 9–10. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: September 13, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–25298 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA126–5061; FRL–7391–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Ozone Maintenance Plan and Mobile Sources Emissions Budget for the Richmond Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision amends Virginia's ten-year plan to maintain the national ambient air quality standard (NAAQS) for ozone in the Richmond area. The maintenance plan is being amended to change the contingency measures portion and to identify measures taken in response to recorded violations of the 1-hour ozone NAAQS in the Richmond area. The maintenance plan is also being amended to substitute measures that establish a safety margin to retain the 2015 motor vehicle emissions budget for volatile organic compounds. This action is being taken under the Clean Air Act (the Act).

DATES: Written comments must be received on or before November 6, 2002.

ADDRESSES: Written comments may be mailed to Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or via e-mail at *cripps.christopher@epa.gov.* While clarifying questions may be posed via e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

What Is the History of the Maintenance Plan for the Richmond Area?

The Richmond area includes the following jurisdictions in Virginia: Henrico, Hanover, and Chesterfield Counties, part of Charles City County and the Cities of Richmond, Colonial Heights and Hopewell.[1] On November 17, 1997 (62 FR 61237), EPA approved the Commonwealth of Virginia's request to redesignate the Richmond moderate ozone nonattainment area to attainment, and also approved Virginia's 10-year plan for continued maintenance of the 1-hour ozone NAAQS in the Richmond area as a revision to the Virginia SIP.

A provision of the Virginia maintenance plan requires the state to adopt and implement contingency measures in the event of a violation of the 1-hour ozone NAAQS. On June 5, 1998, EPA revoked the 1-hour ozone NAAQS, that is, as a legal matter, made the 1-hour standard not applicable. *See* 63 FR 31013, June 5, 1998. On September 18, 1998, the Richmond area violated the 1-hour ozone NAAQS. On August 1, 1999 a second monitor in the Richmond area recorded a violation of the 1-hour ozone NAAQS. However, in 1998 and 1999, at the time of the violations, the 1-hour ozone NAAQS had been revoked by EPA in all areas that had attained the standard, including the Richmond area.

On October 18, 2000, EPA reinstated the 1-hour ozone NAAQS in the Richmond area and notified Virginia that it was required to implement the contingency measures contained in the SIP-approved maintenance plan to address the violations that occurred in 1998 and 1999. *See* 65 FR 45182, July 20, 2000.

II. Content of the November 20, 2001 SIP Revision

When Did Virginia Submit the Revisions to the Contingency Plan and Substitute Measures for the 2015 Safety Margin?

On November 20, 2001, the Virginia Department of Environmental Quality (VA DEQ) submitted an amendment to the 1-hour ozone maintenance plan for the Richmond area to address the violation of the 1-hour ozone NAAQS, to revise the contingency measures part of the plan and to use different measures that establish a safety margin needed to support the 2015 volatile organic compound (VOC) motor vehicle emissions budgets.

What Did the Original Contingency Plan Require in the Event of an Exceedance or Violation of the 1-Hour Ozone NAAQS?

The original contingency measure section that was approved as part of the Richmond maintenance plan contained the following emission control measures that are to be implemented in response to recorded exceedances and violations of the ozone standard in the area:

1. Preparation of a comprehensive ozone precursor emissions inventory for the area, and implementation of a voluntary ozone advisory and action program.

2. Implementation of a basic motor vehicle inspection and maintenance (I/M) program.

3. Implementation of Reasonably Available Control Technologies (RACT) on major sources of NO_X emissions.

4. Open burning restrictions and appropriate transportation control measures (TCMs).

The first has already been implemented with the ozone forecast and action program jointly administered by the VA DEQ and the Richmond Ridefinders organization. The first scheduled progress tracking emissions inventory for 1999 has been developed. Virginia's preliminary analysis of the 1999 emissions inventory for Richmond indicated that the emissions levels remain below the established attainment emissions caps.

In response to the 1998 and 1999 monitored violations of the 1-hour ozone standard in the Richmond area, the current contingency measure section calls for the implementation of a basic I/M program. The plan requires the basic I/M regulation to be adopted within 12 months of notification by EPA, and implemented within 8 months after adoption (for a total of twenty months upon notification from EPA). Based on the effective date of the reinstatement of the 1-hour standard of October 18, 2000, a contingency measure would have to be implemented in the Richmond area by no later than June 2002.

Why and How Has Virginia Changed the Contingency Plan Portion of the Richmond Maintenance Plan?

The Commonwealth has re-evaluated the contingency measures in the Richmond maintenance plan, and revised the contingency measure section of the maintenance plan through the November 20, 2001 SIP revision. As a result of this re-evaluation of the contingency plan, Virginia determined that a basic I/M program is a less effective and desirable contingency measure than originally anticipated. This is due to the limited emission reduction potential of such a program, along with the substantial administrative and implementation effort required to establish the program.

As a result, the Commonwealth revised the contingency measure section of the Richmond maintenance plan to contain the following list of contingency measures:

1. Voluntary ozone advisory and action program (implemented in 1996).

2. Open burning restrictions (implemented by state regulation in 2000). The Commonwealth is only using the VOC reductions from this measure as a contingency measure to address the violations that occurred in 1998 and 1999.

[1] For the boundaries of the portion of Charles City County within the Richmond ozone maintenance area, *see* 40 CFR 81.347.

3. Emission standards for nonroad spark-ignition handheld engines—Phases 1 & 2 (Phase 1 implemented, Phase 2 to be implemented in 2002).

4. Reduction of oxides of nitrogen (NO_X) from large utility and industrial sources or ''NOX SIP Call'' (to be implemented by Federal rule in 2003 or state regulation beginning in 2004). This measure replaces the NO_X RACT contingency measure in the original contingency measure section.

If these measures do not provide for continued maintenance of the 1-hour standard, and this standard remains in effect for the Richmond area, the Virginia's revised continency plan calls for the evaluation of the feasibility and effectiveness of implementing the following additional contingency measures at that time:

1. TCMs.
2. Other measures to be determined.

What Is the History of the 2015 Motor Vehicle Emissions Budgets?

The Richmond maintenance plan must cover a ten-year period through calendar year 2007 and as a result establishes motor vehicle emissions budgets for 2007. These 2007 motor vehicle emissions budgets would apply for any conformity determination for any year after 2007 in the absence of specific budgets for years after 2007. On July 30, 1996, Virginia submitted a SIP revision modifying the motor vehicle emissions budgets in the Richmond maintenance plan for 2015 and later years.[2] In that revision, Virginia determined that emission reductions over and above that needed to demonstrate maintenance from other portions of the emissions inventory will occur during this time period even though mobile source emissions of NO_X and VOC are predicted to rise in the year 2015 as vehicle travel increases. The July 30, 1996 revision relied on reductions from a ban on open burning and from national emission control programs on locomotive and marine engine sources to modify the 2015 mobile source emissions budgets.

The additional emissions reductions from the open burning ban and the national control programs created a safety margin. For Richmond the safety margin for VOC emissions was 3.78 tons/day and for NO_X was 6.64 tons/day. All these reductions from the area and non-road source categories were allocated to the motor vehicle emissions budget for the purposes of conformity determinations. The 2015 motor vehicle emissions budgets in the maintenance plan were increased to 35.64 tons/day for VOC emissions and 67.71 tons/day for NO_X emissions. EPA approved these revised budgets on November 17, 1997 (62 FR 61237).

How Is the 2015 Safety Margin Being Sustained?

Because Virginia is now using the VOC emission reduction credits from open burning restrictions for contingency measure purposes, the 2015 VOC safety margin is now being revised to replace the emission reduction benefits (2.75 tons/day in 2015) from the open burning measure with equivalent benefits from the small nonroad gasoline-powered engine standards control program. The safety margin for NO_X is not affected by the November 20, 2001 revision.

What Is the Status of the Open Burning Control Measure?

Virginia has implemented restrictions on certain open burning operations in the Richmond area starting with the calendar year 2000. The new restrictions prohibit as of January 1, 2000, open burning for the purpose of disposal of clean burning construction waste, debris waste, and demolition waste on the site of local landfills is prohibited in the Richmond Volatile Organic Compounds Emissions Control Area during June, July, and August.[3] Virginia has adopted these requirements into its state code at 9 VAC 5 Chapter 40, Existing Stationary Sources, Part II, Emission Standards, Article 40, Emission Standards For Open Burning (Rule 4–40). This rule is both Federally and State enforceable. This rule was approved into the Virginia SIP on March 12, 1997 (62 FR 11334) and is codified at 40 CFR 52.2420(c)(113). Virginia did not rely upon this rule to demonstrate maintenance for the ten-year period ending calendar year 2007 that is covered by the maintenance plan for the Richmond area.

However, Virginia did rely upon the VOC and NO_X benefits from this measure to establish ''long-range'' (2015 and beyond) mobile source emissions budgets for the purpose of demonstrating transportation conformity.

Because Virginia is now using the VOC reductions from the open burning restrictions as a contingency measure to address the 1998 and 1999 violations of the ozone NAAQS, the same reductions can no longer be used to supplement the long-range transportation conformity motor vehicle emission budgets in the future. Therefore, through this SIP revision, Virginia has replaced these emission reductions from open burning restrictions in the long-range transportation budget with equivalent VOC reductions from the small gasoline engine standards that have been estimated to occur by 2015. The NO_X reduction benefit from the open burning restrictions will be retained for long range conformity purposes.

Virginia did not rely upon this measure for its demonstration of maintenance.

What Are the Benefits From the Small Nonroad Gasoline-powered Engine Standards Control Program?

EPA promulgated emission standards for small nonroad gasoline-powered engine standards in two phases of control. EPA promulgated the Phase 1 final rule for handheld and non-handheld equipment on July 3, 1995, (60 FR 34582; codified at 40 CFR part 90). The phase 1 rule took effect for most new handheld and non-handheld engines beginning in model year 1997. EPA promulgated the Phase 2 rules for non-handheld equipment on March 30, 1999 (64 FR 15208; codified at 40 CFR part 90). These Phase 2 standards took effect for most new non-handheld engines beginning in model year 2001. EPA promulgated the Phase 2 rules for handheld equipment on April 25, 2000, (65 FR 24268; codified at 40 CFR part 90). These Phase 2 standards for took effect for most new handheld engines beginning in model year 2002.

Virginia did not rely upon these rules in its demonstration of maintenance through 2007 in the maintenance plan approved on November 17, 1997. The VA DEQ has determined that this measure will produce 3.84 tons per day of VOC emission reductions in 2002 and over 11 tons per day in 2015. VA DEQ is applying all of the 3.84 VOC emission reduction in 2002 as a contingency measure. In the revised maintenance plan, 2.75 tons per day of the total 11 plus tons per day of VOC emission reductions in 2015 from this measure are being used to maintain the safety margin necessary to support the 2015 VOC motor vehicle emissions budget. In effect, part of the 2015 VOC emission reductions are being substituted for the 2.75 tons per day of VOC emission reductions from the open burning measure in order to maintain the safety margin for the 2015 VOC motor vehicle emissions budgets.

[2] While the maintenance plan was required to cover out to 2007, transportation plans must show conformity for twenty years. Therefore, when the Richmond maintenance plan was submitted in 1996 conformity determinations had to consider a ''horizon'' as far out as 2017.

[3] The Richmond Emissions Control Area for Volatile Organic Compounds consists of Charles City, Chesterfield, Hanover and Henrico Counties and the Cities of Colonial Heights, Hopewell, and Richmond. See 9 VAC 5–20–206.

What Would Have Been the Benefits From the Vehicle Inspection Maintenance Program?

The VA DEQ estimated that the basic biennial and decentralized I/M program in the original maintenance plan would produce a 1.23 ton/day reduction in VOC emissions and a 0.14 ton/day reduction in NO_X emissions once the program is fully implemented.

How Does the Emission Reductions From the Current Contingency Measure Compare With the Revised Maintenance Plan?

Initial Contingency Plan (Reductions)		
Basic Vehicle I/M Program	1.23 tons/day	0.14 tons/day
Revised Contingency Plan (Reductions beginning in 2000)		
Open Burning Restrictions	2.40 tons/day	Not Used.
Nonroad Engine Standards—Phase 1&2	3.81 tons/day	0.01 tons/day.
NO_X SIP Call	None	Up to 46 tons/day.

III. EPA's Evaluation of Virginia's SIP Revision

Because the Richmond area had violated the ozone NAAQS, Virginia was required to adopt and implement contingency measures to reduce emissions.

There are four ozone monitors in the Richmond area. These are in Charles City County, Hanover County, Henrico County and Chesterfield County. The monitors in Henrico and Charles City Counties are the only ones that have recorded a violation of the 1-hour ozone NAAQS since the area was redesignated to attainment in 1997: The Hanover County monitor recorded two exceedances of the 1-hour ozone NAAQS during the 1997 ozone season, two exceedances occurred during the1998 season and four in the 1999 season. The second exceedance recorded during 1998 ozone season constituted the violation of the 1-hour ozone NAAQS. The Charles City County monitor recorded no exceedances of the 1-hour ozone NAAQS during the 1997 and 1998 ozone seasons but recorded five during the 1999 season. The fourth exceedance recorded during 1999 ozone season constituted the violation of the 1-hour ozone NAAQS at this monitor.

Since the time of full implementation of the open burning restrictions in May of 2000, none of monitors in either Charles City or Hanover Counties have recorded an exceedance of the 1-hour ozone NAAQS. The other two monitors in the area have continued to show attainment. The control requirements for open burning restrictions have provided a sufficient level of emission reductions to maintain the 1-hour NAAQS and have strengthened the SIP. The Virginia revised contingency plan provided for earlier emission reduction than the original plan and provides for a continual reduction of VOC and NO_X emissions over the same time frame.

Therefore, EPA believes that adequate contingency measures have been adopted and implemented for the Richmond area to prevent future violations of the 1-hour ozone NAAQS.

EPA's review of this material indicates Virginia has adopted adequate control measures. Virginia has substituted equivalent emission reductions for the basic I/M program. EPA believes that the proposed revisions to the Richmond maintenance plan will continue to provide attainment of the 1-hour ozone NAAQS in the future.

We are seeking public comments on this proposed rulemaking and will accept such comments provided they are submitted as specified in the **DATES** and **ADDRESSES** sections of this document. We will address all comments in our final rulemaking on the revisions to Virginia's maintenance plan.

EPA is proposing to approve the November 20, 2001 SIP revision to Virginia's 1-hour ozone maintenance plan for the Richmond area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to approve the revisions to Virginia's 1-hour ozone maintenance plan for the Richmond area submitted by the VA DEQ on November 20, 2001.

V. 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 action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve 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 proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule on revisions to the Richmond maintenance plan 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: September 30, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–25416 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA135–4101b; FRL–7389–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Allegheny County's Generic VOC and NO_X RACT Regulation and Revised Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania on behalf of the Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality (hereafter the ACHD). These revisions consist of a generic regulation which requires major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) to implement reasonably available control technology (RACT) and related changes to the definitions of the terms ''major source'' and ''potential emissions'' and ''low NO_X burner with separate overfire air''. This generic RACT regulation applies to major sources not otherwise subject to RACT pursuant to other ACHD regulations. These sources are located in Allegheny County which is part of the Pittsburgh-Beaver Valley ozone area. In the Final Rules section of this **Federal Register**, EPA is approving the ACHD's generic VOC and NO_X regulation as a revision into the Pennsylvania SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by November 6, 2002.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice Lewis at (215) 814–2185, the EPA Region III address above or by e-mail at *lewis.janice@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action for Allegheny County's generic RACT regulations, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 24, 2002.

James M. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 02–25286 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0046b; FRL–7383–1]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana: General Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Montana State Implementation Plan (SIP) submitted by Governor of Montana on August 26, 1999. The revisions adopt Administrative Rules of Montana (ARM), Sub-Chapter 14, ''Conformity of General Federal Actions,'' Sections 17.8.1401 and 17.8.1402, into the SIP. EPA is taking this action under section 110 and 176 of the Clean Air Act (Act). The conformity rules assure that in air quality nonattainment or maintenance areas projected emissions stay within the emissions ceiling in the SIP. The rules for conformity of general Federal actions assure that actions of Federal agencies that take place in nonattainment or maintenance areas, other than transportation actions, are consistent with the goals of the Montana SIP.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal

because the Agency views these as non-controversial revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before November 6, 2002.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and, Air and Radiation Docket and Information, Room B–108, United States Environmental Protection Agency, (Mail Code 6102T), 1301 Constitution Avenue NW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Department of Environmental Quality, Planning, Prevention and Assistance Division, 1520 East 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kimes, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Telephone number: (303) 312–6445.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: September 12, 2002.

Jack McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–25288 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 61

[ND–001–0005b & ND–001–0007b; FRL–7379–9]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and delegation of authority.

SUMMARY: EPA proposes to approve revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated June 21, 2001. The revisions affect air pollution control rules regarding general provisions, emissions of particulate matter and fugitives, exclusions from Title V permit to operate requirements, and prevention of significant deterioration. EPA will handle separately direct delegation requests for emission standards for hazardous air pollutants for source categories and the State's Acid Rain Program.

In addition, EPA is providing notice that on January 3, 2002, North Dakota was delegated authority to implement and enforce certain New Source Performance Standards (NSPS), as of August 1, 2000. Finally, given that on July 7, 1995 EPA delegated authority to North Dakota to implement and enforce the Clean Air Act section 112 requirements, including, among other things, the National Emission Standards for Hazardous Air Pollutants (NESHAPs), EPA proposes to remove the State's NESHAPs regulations from the federally-approved SIP.

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before November 6, 2002.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the State documents relevant to this action are available for public inspection at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

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

Dated: September 3, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–25290 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

Proposed Waiver of the Applicability of Certain Provisions of Department of Health and Human Services Regulations for the Protection of Human Subjects for Department of Health and Human Services Epidemiologic Research Involving Prisoners as Subjects

AGENCY: Office for Human Research Protections, Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

ACTION: Proposed notice of waiver.

SUMMARY: The Department of Health and Human Services (DHHS) is proposing to waive the applicability of certain provisions of Subpart C of 45 CFR part 46, the DHHS regulations for the protection of human subjects, to specific types of epidemiological research involving prisoners as subjects. Subpart

C, entitled Additional DHHS Protections Pertaining to Biomedical and Behavioral Research Involving Prisoners as Subjects, sets forth specific requirements for any research involving prisoners that is conducted or supported by DHHS. Pursuant to 45 CFR 46.101(i), the Secretary of Health and Human Services proposes waiving the applicability of 45 CFR 46.305(a)(1) and 46.306(a)(2) to allow DHHS to conduct or support certain important and necessary epidemiologic research that presents no more than minimal risk and no more than inconvenience to prisoner-subjects.

DATES: Comments on the proposed waiver must be received on or before November 6, 2002.

ADDRESSES: Comments must be sent to: Irene Stith-Coleman, Ph.D., Office for Human Research Protections (OHRP), The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Telephone 301–496–7005. E-mail *istithco@osophs.dhhs.gov*. The Department invites written comments on the proposed waiver.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Ph.D., Office for Human Research Protections (OHRP), The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Telephone 301–496–7005. E-mail *istithco@osophs.dhhs.gov*. Interested persons may obtain a copy of the current regulations for protection of human subjects, including subpart C, at *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/45cfr46.htm*.

SUPPLEMENTARY INFORMATION:

Proposed Waiver

Pursuant to 45 CFR 46.101(i), the Secretary of Health and Human Services (HHS) proposes waiving the applicability of 45 CFR 46.305(a)(1) and 46.306(a)(2) for certain research conducted or supported by DHHS. In specific, for DHHS conducted or supported research involving epidemiologic studies (1) in which the sole purposes are (i) to describe the prevalence or incidence of a disease by identifying all cases, or (ii) to study potential risk factor associations for a disease, and (2) where the institution responsible for the conduct of the research certifies to the Office for Human Research Protections (OHRP), acting on behalf of the Secretary, that the Institutional Review Board (IRB) approved the research and fulfilled its duties under 45 CFR 46.305(a)(2)-(7) and determined and documented that (i) the research presents no more than minimal risk and no more than inconvenience to the prisoner-subjects, and (ii) prisoners are not a particular focus of the research, the Secretary of DHHS proposes waiving the requirements in sections 46.305(a)(1) and 46.306(a)(2) that the IRB and the Secretary determine that the research involves one of the categories of research permissible under 45 CFR 46.306(a)(2).

Background

DHHS conducts or supports certain epidemiologic studies in which the purposes are: (1) to describe the prevalence or incidence of a disease by identifying all cases, and (2) to study potential risk factor associations for a disease. For most such studies, the IRB determines that the research at issue involves no more than minimal risk and no more than inconvenience to the subjects. The human participants in this type of public health research may include prisoners in the study population. State health agencies are most commonly the conduits for this kind of research.

Subpart C of the DHHS regulations, set forth in 45 CFR 46.301 *et seq.*, defines four categories of research that may involve prisoners. Sections 45 CFR 46.305(a)(1) and 46 306(a)(2) require that IRBs and the Secretary, respectively, determine that research involving prisoners represent one of these four categories. The first three, paragraphs (i), (ii), and (iii) of 46.306(a)(2), require that the research target either (i) the causes, effects, or processes of incarceration and of criminal behavior; (ii) the prison as an institution or prison life; or (iii) conditions particularly affecting prisoners as a class. The fourth, paragraph (iv) of 46.306(a)(2), permits research on practices which have the intent and reasonable probability of improving the health or well-being of the prisoner-subject. Certain epidemiologic studies conducted or supported by the DHHS do not fall into any of these four categories. Instead, the research focuses on a particular condition or disease which might affect prisoners as it would anyone else in the population.

An example of an epidemiological study that would be permitted under the proposed waiver is one in which all persons with HIV, but with none of the known risk factors for HIV, are asked to participate in a study involving an interview, review of medical records, and collection of a blood specimen. The purpose of the study is to determine other potential risk factors for HIV. All states with mandatory HIV reporting laws report these cases to the Centers for Disease Control and Prevention (CDC). Each person who meets the study definition would be asked to participate, and prisoners could well be members of the potential study group.

The range of studies to which the proposed waiver would apply includes chronic diseases, injuries, and environmental health. This type of research uses epidemiologic methods (such as interviews and collection of biologic specimens) that entails no more than minimal risk to the subjects.

The specific type of epidemiological research conducted by DHHS and subject to the proposed waiver involves no more than minimal risk and no more than inconvenience to the human subject participants. The proposed waiver would allow DHHS to conduct or support a type of minimal risk research that does not now fall within the categories set out in 45 CFR 46.306(a)(2).

Periodic Review

If implemented, a periodic review of the ways in which DHHS implements the proposed waiver would be conducted by OHRP to determine the adequacy of the waiver in meeting its intended need or if adjustments to the waiver might be necessary and appropriate.

Dated: September 9, 2002.

Eve E. Slater,

Assistant Secretary for Health.

Approved: September 26, 2002.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 02–25205 Filed 10–4–02; 8:45 am]

BILLING CODE 4150–28–P

Notices

Federal Register

Vol. 67, No. 194

Monday, October 7, 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

Agricultural Marketing Service

[Docket No. DA–02–05]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Services' (AMS) intention to request an extension for and revision to a currently approved information collection for the Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping (Subpart B).

DATES: Comments received by December 6, 2002, will be considered.

FOR FURTHER INFORMATION CONTACT: Susan M. Sausville, USDA/AMS/Dairy Programs, Dairy Standardization Branch, Room 2746-South Building, 1400 Independence Avenue, SW., Washington, DC 20250–0230; Tel: (202) 720–2643, Fax: (202) 720–2643 or via e-mail at *susan.sausville@usda.gov*

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Record Keeping (Subpart B).

OMB Number: 0581–0110.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) directs the Department to develop programs which will provide for and facilitate the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products (7 CFR part 58) where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products under the dairy program may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there are regulations for the provider and user. For these reasons, the dairy inspection and grading program regulations were developed and issued under the authority of the Act. These regulations are essential to administer the program to meet the needs of the user and to carry out the purposes of the Act.

The information collection requirements in this request are essential to carry out the intent of the AMA to ensure that dairy products are produced under sanitary conditions and that buyers are purchasing a quality product. In order for the Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products to serve the government, industry, and the consumer, laboratory test results must be recorded.

Respondents are not required to submit information to the agency. The records are to be evaluated by a USDA inspector at the time of an inspection. These records include quality tests of each producer, plant records of required tests and analysis, and starter and cheese make records. As an offsetting benefit, the records required by USDA are also records that are routinely used by the inspected facility for their own supervisory and quality control purposes.

Estimate of Burden: Public reporting burden for this record keeping is estimated to average 2.85 hours per response.

Respondents: Dairy products manufacturing facilities.

Estimated Number of Respondents: 487.

Estimated Total Annual Burden on Respondents: 1388.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to the Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968-S, 1400 Independence Avenue SW., Washington, DC 20090–6456. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 1, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–25431 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Pyramid Timber Sales, Willamette National Forest, Linn County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: August 2, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the South Pyramid Timber Sales on the Sweet Home Ranger District of the Willamette National Forest, was published in the **Federal Register** (64 FR 41912). The 1999 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Brian McGinley, Resource Planner, Sweet Home Ranger District, 3225 Highway 22, Sweet Home, Oregon 97386; phone 541–367–5168.

Dated: September 19, 2002.

Michael Rassbach,

District Ranger.

[FR Doc. 02–25375 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–-11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino National Forest, Arizona; Arizona Snowbowl 2002 Facilities Improvements Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the anticipated environmental effects of the Arizona Snowbowl (Snowbowl) proposed 2002 Facilities Improvements Plan. The chief feature of the Proposed Action is Snowbowl's proposal to develop snowmaking. This would entail the burial of air, water, and electrical lines within the ski area sufficient to enable the Snowbowl to produce artificial snow from reclaimed water on 203.5 acres of skiing terrain. Snowmaking would also require the construction of a 10 million gallon water storage pond within the ski area, as well as the construction of a pipeline from Flagstaff to the Snowbowl to convey the water.

The other major aspects of the Proposed Action include:

- Realignment, modernization and/or upgrade of the Sunset, Hart Prairie and Aspen chairlifts; and installment of a new Humphrey's chairlift to provide skier access to a new pod of ski runs.
- Creation of approximately 66.5 acres of new skiing terrain, intended to primarily serve intermediate and advanced skiers. This proposed work comprises widening and extending some trails, and the construction of two sets of new trails.
- Construction of a seven-acre snowplay area near the Hart Prairie Lodge. The proposed snowplay area would include a surface conveyor, a parking lot, and a guest services building.
- Construction of a snowboarding halfpipe near the bottom of the existing Sunset chairlift.
- Enlargement and upgrading of both day lodges.
- Development of a 2,500 sq. foot Cultural Center in or near the Agassiz Lodge.
- Construction of three new ski team buildings to replace existing buildings.
- Placement of low-watt lighting on ski trails and facilities on the middle to lower areas of the ski area for night skiing.
- Construction of a redesigned entrance loop to improve vehicle traffic flow.
- Construction of pedestrian underpass between the Hart Prairie Lodge and the Sunset chairlift to increase pedestrian safety and improve traffic flow.
- Construction of a hiking trail from the existing Agassiz mid-station to the top of the Aggasiz chairlift.
- Construction of an Americans with Disability Act (ADA)-complaint summer access trail into Hart Prairie.
- Combination of parking lots 1 and 2.
- Thinning of approximately 42 acres of dead and dying trees.
- Improvement of skiing terrain by grading/stumping 50 acres and smoothing 10 acres on existing ski runs, and
- Creation of a dedicated ski teaching area to accommodate beginning skiers.

The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected individuals may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments concerning the proposal and environmental analysis should be received by November 15, 2002. A draft environmental impact statement is expected in June of 2003 and a final environmental impact statement is expected in January of 2004.

ADDRESSES: Send written comments concerning this proposal to: Peaks Ranger District, attn: Snowbowl Upgrade, 5075 N. Highway 89, Flagstaff, AZ 86004. e-mail: *r3_coconino_snowbowlupgrade@fs.fed.us.*

FOR FURTHER INFORMATION: Direct questions about the proposed action and EIS to Ken Jacobs, Peaks Ranger District, Phone: (928) 214–2464.

SUPPLEMENTARY INFORMATION: The Proposed Action addresses issues related to safety, customer service and economics associated with the operations of the existing ski area. All elements of the proposal remain within the existing Special Use Permit Boundary. Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the U.S. Forest Service and administered by the Coconino National Forest. Many of the proposed projects have been conceptually approved through a previous National Environmental Policy Act analysis.

The permitted ski area is coated on National Forest System lands within sections 31 and 32, Township 23 North, Range 7 East; section 36 Township 23 North, Range 6 East; sections 5 and 6, Township 22 North, Range 7 East; and sections 1, Township 22 North, Range 6 East.

The proposed improvements are consistent with the Coconino National Forest Land and Resource Management Plan (Forest Plan). The proposed improvements are considered necessary in light of current resort deficiencies, increased visitation experienced over the past decade and projects future visitation. The ensuing analysis will provide additional site-specific detail for the proposal to reflect changing socio-economic and environmental considerations, and may modify the project proposal in response to environmental issues.

The majority of the proposed improvements are originally within the 1979 Final Environmental Impact Statement and the Record of Decision for the Arizona Snowbowl Ski Area Proposal. New proposed projects have been designed to remain within the scope of the 1979 Ski Area Proposal and Final Environmental Impact Statement. The proposed improvements provide high quality, reliable recreational opportunities while minimizing effects to surrounding resource values. This has been accomplished by focusing the scope of the proposed action on the key elements necessary to significantly enhance the quality of the skiing experience offered to the recreating public.

Purpose and Need for Action

The Forest Service and Arizona Snowbowl cooperatively determined broad categories important to the improvement to the Arizona Snowbowl (Snowbowl) facilities. From these categories, a list of proposed projects was created. The overall Purpose and Need for these projects responds to the three broad categories, (1) consistent/reliable operating season by snowmaking, (2) improve skiing and recreational opportunities by bringing terrain and infrastructure into balance with demand, and (3) facilities need to comply with Americans with Disabilities Act (ADA).

Possible Alternatives

There are no alternatives identified at this time. However, different configurations of improvements or

different sources of water for snowmaking will likely be explored.

Responsible Official

The responsible official is Jim Golden, Forest Supervisor for the Coconino National Forest, 2323 E Greenlaw Lane, Flagstaff AZ 86004. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

Nature of Decision To Be Made

The decision will be to modify the master plan for the Snowbowl Ski permit, if an action alternative is selected. All potential actions are within the existing permit area; there will be no expansion of the area.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to Snowbowl's proposal. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

Two public open houses will be held. The first, on October 10, 2002 from 6:30 p.m. to 8:30 p.m. and the second, on October 26, 2002 from 2 p.m. to 5 p.m. Both meetings will be held at the Flagstaff High School Commons in Flagstaff Arizona. The purpose of the meetings will be to provide the public with an opportunity to become more familiar with the proposal and to understand the review and analysis process that will be used in evaluating this proposal. Additional information may also be obtained on the web by accessing: *http://www.fs.fed.us/r3/coconino/nepa.*

Preliminary Issues

Identified preliminary issues include:

Traditional Cultural Property—The San Francisco Mountain is a Traditional Cultural Property (TCP) and was determined eligible for the National Register of Historic Places as part of the White Vulcan Mine Settlement in July 2000. The Mountain is of traditional cultural significance to several Indian tribes, including the Hopi, Navajo, Zuni, Hualapai, Havasupai, Yavapai-Apache, Yavpai-Prescott, Tonto Apache, White Mountain Apache, San Carlos Apache, San Juan Southern Paiute, Fort McDowell Mohave Apache, and Acoma. Previous input has indicated that commercial and recreational activities on the Mountain sometimes conflict with these values.

Snowmaking—Preliminary input from some members of the public have expressed concern over the hydrological effects of snowmaking on the surrounding land. In addition, some people have expressed health related concerns over the use of reclaimed water for snowmaking.

These issues as well as any other identified by this scoping process will be analyzed in detail during the EIS process. Alternatives may be developed or mitigation measures identified to address issues related to the proposed action.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participation by the close of the November 15, 2002 comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 1, 2002.

Rodger Zanotto,

Acting Forest Supervisor, Coconino National Forest.

[FR Doc. 02–25373 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to discuss and to receive project proposals regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The meeting will be held November 19, 2002, 6:30 p.m. to 9:30 p.m.

ADDRESSES: 1600 Tollhouse Road, California. The meeting will be held at the Sierra National Forest, Forest Supervisor's office, 1600 Tollhouse Road, Clovis, California 93611–0532. Send written comments to Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *nfleenor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, (559)855–5355 ext. 3350.

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County Title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by November 19, 2002 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the October 15, 2002 meeting notes; (2) discuss new business of the RAC if applicable; (3) discuss the progress of the 2001 funded projects; (4) consideration of Title II Project proposals from the public and/or the RAC members; (5) confirm the date, location and agenda of the next meeting; (6) public comment.

Dated: September 30, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–25344 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on October 7, 2002 in Dayton, Washington. The purpose of the meeting is to discuss future RAC actions including the consideration of possible Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on October 7, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the U.S. Post Office, 202 S. 2nd St., Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fuishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This meeting will focus on Title II project proposals. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: September 30, 2002.

Monte Fujishin,

Columbia County RAC Designated Federal Official.

[FR Doc. 02–25354 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on October 28, 2002, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to review subcommittee recommendations on how to improve funding and administrative procedures for project proposals.

DATES: The meeting will be held October 28, 2002, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora CA 95370 (209) 532–3671; EMAIL *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Report out from the Chairperson's presentation to the Tuolumne County Board of Supervisors; (2) Review subcommittee recommendations on how to improve funding and administrative procedures for project proposals; (3) Determine purpose and dates of future meetings. This meeting is open to the public.

Dated: September 30, 2002.

Glenn Gottschall,

Acting Forest Supervisor.

[FR Doc. 02–25376 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Status of Project Proposals, (5) Draft Project Evaluation Criteria/Possible Action, (6) Draft Project Evaluation & Tracking Report/Possible Action, (7) General Discussion, (8) Project Presentation/Possible Action.

DATES: The meeting will be held on October 28, 2002, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Williows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussions is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 24, 2002 will have the opportunity to address the committee at those sessions.

Dated: October 1, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–25439 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms from Indonesia: Initiation of New Shipper Antidumping Duty Review

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

ACTION: Notice of Initiation of New Shipper Antidumping Duty Review for the period February 1, 2002, through July 31, 2002.

EFFECTIVE DATE: October 7, 2002.

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating a review for PT Eka Timur Raya and PT Karya Kompos Bagas.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

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 (2002).

Background

The Department has received timely requests from PT Eka Timur Raya (Etira) and PT Karya Kompos Bagas (KKB), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia, which has a February anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which exported certain preserved mushrooms during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that 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 a new shipper review for Etria and KKB.

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 a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review.

Antidumping Duty New Shipper Review Proceeding	Period to be Reviewed
PT Eka Timur Raya	02/01/02 - 07/31/02
PT Karya Kompos Bagas	02/01/02 - 07/31/02

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 subject merchandise from the above-listed companies in accordance with 19 CFR 351.214(e). Because Etria and KKB certified that they both produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review 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: September 30, 2002.

Richard Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–25448 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Initiation of Fifth New Shipper Antidumping Duty Review

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

SUMMARY: The Department of Commerce has received requests to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with 19 CFR 351.214(d), we are initiating a review for Xiamen Zhongjia Imp. and Exp. Co., Ltd. and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., both producers and exporters of certain preserved mushrooms from the People's Republic of China (''PRC'').

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766.

SUPPLEMENTARY INFORMATION:

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 2002).

Background

The Department has received timely requests from Xiamen Zhongjia Imp. and Exp. Co., Ltd. (''Zhongjia'') and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. (''Minhui''), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC, which has a February anniversary month.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), each company identified above has certified that it did not export certain preserved mushrooms 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 certain preserved mushrooms during the POI. The 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), each company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that 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 the new shipper review for Minhui and Zhongjia.

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 a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. We intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Antidumping Duty New Shipper Review Proceeding	Period to be Reviewed
PRC: Certain Preserved Mushrooms, A–570–851:	
Xiamen Zhongjia Imp. and Exp. Co., Ltd.	02/01/02 - 07/31/02
Zhangzhou Longhai Minhui Industry and Trade Co., Ltd.	02/01/02 - 07/31/02

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 subject merchandise from the above-listed companies. Because Minhui and Zhongjia have certified that they both produce and export the subject merchandise, the sale of which was the basis for this new shipper review request, we will apply the bonding privilege only to subject merchandise for which they are both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review 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: September 30, 2002.

Richard Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–25449 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges From India; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On March 7, 2002, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India (67 FR 10358). The review covers flanges manufactured by Isibars Ltd. (Isibars), Panchmahal Steel Ltd. (Panchmahal), Patheja Forgings and Auto Parts Ltd. (Patheja), and Viraj Forgings Ltd. (Viraj). The period of review (POR) is February 1, 2000, through January 31, 2001. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–5222 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

We invited parties to comment on our preliminary results of review, and we received briefs and rebuttals from the petitioners, the Coalition Against Indian Flanges, and Viraj.

Scope of Review

The products under review are certain forged stainless steel flanges from India, both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

Use of Facts Available

As in the preliminary results, and for the reasons stated therein, we have continued to assign to Panchmahal and Patheja the rate of 210%, based on adverse facts available.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Joseph A.

Spetrini, Deputy Assistant Secretary, Important Administration, Group III, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the International Trade Administration's Web site at *http://www.ia.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our verification and analysis of the comments received, we have changed our approach to the margin calculation for Viraj. *See* the Decision Memo.

Final Results of the Review

We determine that the following percentage weighted-average margins exists for the period February 1, 2000, through January 31, 2001:

CERTAIN FORGED STAINLESS STEEL FLANGES FROM INDIA

Weighted-average margin	Producer/ manufacturer/ exporter (percent)
Isibars	0
Panchmahal	210.00
Patheja	210.00
Viraj	0

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review. We will direct the Customs Service to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period.

In addition, the following deposit requirements will be effective upon publication of this notice for all shipments of stainless steel flanges from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act:

(1) For the companies reviewed, the cash deposit rates will be the rates listed above, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 162.14 percent, the all others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: September 5, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Petitioners

1. Viraj affiliation with KOP;
2. KOP sales and expenses data;
3. KOP's U.S. selling expenses;
4. Equity infusion;
5. Duty drawback;
6. Billet costs;
7. Duties and taxes in costs;
8. Labor and variable overhead;
9. G&A expense ratio;
10. Interest expense ratio;
11. Direct selling expenses;

Viraj

12. CEP Prices;
13. Production quantities;
14. Weight-averaged prices
15. Margin Calculations
16. Foreign Unit Price
17. Aberrant margin
18. Prices per piece vs. per kilogram
19. Imputed costs in CEP profit

[FR Doc. 02–25445 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Rescission of Antidumping Duty Administrative Review

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

ACTION: Notice of rescission of antidumping duty administrative review.

EFFECTIVE DATE: October 7, 2002.

SUMMARY: On June 25, 2002, the Department of Commerce (the Department) published in the **Federal Register** (67 FR 42753) a notice announcing the initiation of an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey,[1] covering the period May 1, 2001, through April 30, 2002, and one manufacturer/exporter of the subject merchandise, the Borusan Group. We

[1] The review was requested by Allied Tube & Conduit Corporation, IPSCO Tubulars, Inc., and Wheatland Tube Company (Allied Tube, *et al.*), domestic producers of the merchandise under review.

are now rescinding this review as a result of Allied Tube, *et al.*''s withdrawal of their request for an administrative review.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650 or David Layton at (202) 482–0371, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute And Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Background

On May 31, 2002, Allied Tube, *et al.*, in accordance with 19 CFR 351.213(b), requested an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. On June 25, 2002, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of this order for the period May 1, 2001, through April 30, 2002 (67 FR 42753). On September 6, 2002, Allied Tube, *et al.* withdrew their request for this review.

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Allied Tube, *et al.* were the only parties to request this review and they withdrew their request within the 90-day period. Accordingly, this review is rescinded.

This notice is issued and published in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: September 27, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–25446 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 2002, through June 30, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Salkeld, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979, (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period April 1, 2002, through June 30, 2002.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 30, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.08	$0.08
Belgium	EU Restitution Payments	0.02	0.02
Canada	Export Assistance on Certain Types of Cheese	0.22	0.22
Denmark	EU Restitution Payments	0.04	0.04
Finland	EU Restitution Payments	0.12	0.12
France	EU Restitution Payments	0.10	0.10
Germany	EU Restitution Payments	0.05	0.05
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.05	0.05

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Italy	EU Restitution Payments	0.04	0.04
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.04	0.04
Norway	Indirect (Milk) Subsidy	0.29	0.29
	Consumer Subsidy	0.13	0.13
Total		0.42	0.42
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.04	0.04
Switzerland	Deficiency Payments	0.05	0.05
U.K	EU Restitution Payments	0.05	0.05

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 02–25447 Filed 10–4–02; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–833]

Notice of Amended Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Germany

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

ACTION: Notice of amended final affirmative countervailing duty determination.

SUMMARY: On August 30, 2002, the Department of Commerce published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002). On September 4, 2002 we received a ministerial error allegation from Saarstahl AG. On September 9, 2002, the petitioners filed a response to the allegation. Based on our review of the comments received from the parties, we are not revising the estimated countervailing duty rate for Saarstahl AG.

Subsequent to issuing the final determination, the Department noted an error in the calculation of the ''all others'' rate. We have revised the estimated countervailing duty ''all others'' rate accordingly. The revision to the ''all others'' rate is listed below in the ''Amended Final Determination'' section.

EFFECTIVE DATE: October 7, 2002.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4987.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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

Scope of Investigation

The merchandise covered by this investigation is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter (''subject merchandise'' or ''wire rod'').

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following

elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is calendar year 2000.

Amended Final Determination

In accordance with section 705(d) of the Act, on August 30, 2002, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808. On September 4, 2002, we received a ministerial error allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from Saarstahl AG, (''Saarstahl''). Saarstahl alleged that the Department made a ministerial error in the final determination in failing to use an 11–year average useful life (''AUL'') in Saarstahl's calculations. On September 9, 2002, the petitioners (Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.) submitted a rebuttal to Saarstahl's allegation. The petitioners argued that Saarstahl's allegation does not constitute a ministerial error as defined by the Department's regulations and should be rejected by the Department.

After analyzing the submissions, we have determined that Saarstahl's allegation does not constitute a ministerial error as defined by section 351.224(f) of the Department's regulations. For a detailed discussion of the ministerial error allegation and the Department's analysis, *see* September 30, 2002, ''Ministerial Errors'' memorandum from the Team to Richard W. Moreland, Deputy Assistant Secretary (''*Ministerial Errors Memo*''), which is on file in the Department's Central Records Unit in Room B–099 of the main Department building.

After releasing the final determination, the Department found an error in the calculation of the ''all others'' rate. The error resulted from the use of the originally reported sales values for Ispat Walzdraht Hochfeld GmbH (''IWHG'') and Ispat Hamburger Stahlwerke GmbH (''IHSW'') in the calculation, rather than the revised sales values obtained at verification. Using the correct U.S. sales values for IHSW and IWHG, the revised ''all others'' rate is 10.97 percent *ad valorem*. For a discussion of this issue and the revised ''all others'' margin calculation, *see Ministerial Errors Memo*.

Accordingly, we are amending the final determination for the countervailing duty investigation of carbon and certain alloy steel wire rod from Germany to correct the ''all others'' rate. The estimated net subsidy rates are as follows:

Producer/Exporter	Net Subsidy Rate
Saarstahl, A.G.	18.46
Ispat (IHSW, IWHG, ISRG)	1.12
All Others	10.97

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(ii) of the Act, we are directing the Customs Service (''Customs'') to continue suspending liquidation on all imports of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the margin/subsidy rates indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

We will issue a countervailing duty order if the International Trade Commission (''ITC'') issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our amended final determination.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the final reminder to parties subject to an Administrative Protective Order (''APO'') of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d), 705(e) and 777(i) of the Act.

Dated: October 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–25450 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

[I.D. 100102A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Documentation of Fish Harvest.

Form Number(s): None.

OMB Approval Number: 0648–0365.

Type of Request: Regular submission.

Burden Hours: 50.

Number of Respondents: 25.

Average Hours Per Response: 30 minutes.

Needs and Uses: Seafood dealers who possess red porgy, gag, black grouper, or greater amberjack during seasonal fishery closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. Documentation includes information on the vessel that harvested the fish and on where and when the fish were offloaded. The information is required for the enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Recordkeeping.

Respondent's Obligation: Mandatory.

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 Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 26, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–25330 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–007]

Final United States Patent and Trademark Office Information Quality Guidelines

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of availability.

SUMMARY: This document announces the availability of the agency's final information quality guidelines that ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the agency. These guidelines also detail the administrative mechanism developed by the USPTO to allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by the agency that does not comply with the OMB or the agency guidelines. This notice of availability and these guidelines are required by section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554) and the OMB information quality guidelines published in the **Federal Register** on January 3, 2002 (67 FR 369–378); corrected on February 5, 2002 (67 FR 5365); and reprinted in their entirety February 22, 2002 (67 FR 8451–8460).

ADDRESSES: The final USPTO information quality guidelines are available on the USPTO Web site in the News & Notices section, *http://www.uspto.gov/main/newsandnotices.htm.*

FOR FURTHER INFORMATION CONTACT: Bruce Cox, Director, Office of Electronic Information Products, *Bruce.Cox@uspto.gov* (703) 306–2606; or Christopher Leithiser, Information Products Division, *Chris.Leithiser@uspto.gov* (703) 306–2622.

Dated: September 30, 2002.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 02–25475 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 17 October 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC, 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200.

Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 30 September 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–25377 Filed 10–4–02; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 1, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 8, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 360 is being increased for 10% special shift from Category 361, reducing the limit for Category 361 to account for the special shift being applied to Category 360.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also

see 66 FR 63683, published on December 10, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 1, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on October 8, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
360	9,092,671 numbers.
361	9,540,744 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–25397 Filed 10–4–02; 8:45 am]

BILLING CODE 3510–DR–S

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission (''Commission'') will hold an informal conference followed by a public hearing on Wednesday, October 16, 2002. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission offices at 25 State Police Drive, West Trenton, New Jersey.

The conference among the Commissioners and staff will begin at 9:30 a.m. Topics of discussion include: a presentation on ''Green Infrastructure'' by a spokesperson of the Regional Planning Partnership; a presentation on the Filtration Avoidance Determination for the New York City Catskill-Delaware Water Supply System by a spokesperson of the U.S. Environmental Protection Agency; an update on development of the Commission's new Comprehensive Plan; a discussion regarding a Memorandum of Agreement between the Commission and the National Park Service for the development of a Tri-State Watershed Management Area Plan for the Delaware Water Gap Recreation Area; a presentation on the Commission's 2002 305(b) Water Quality Assessment Report; a status report on the PCB TMDL for the Delaware Estuary; a discussion regarding a resolution to amend the *Comprehensive Plan* and *Water Code* relating to the operation of Lake Wallenpaupack during drought watch, drought warning and drought conditions; and a discussion of emergency waivers requested by United Water Delaware and Pennsylvania-American Water Company and proposed docket revisions related thereto.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include, in addition to the dockets listed below, a resolution amending United Water Delaware's Docket D–96–50 CP by the addition of a new condition ''m;'' a resolution regarding a request by the Pennsylvania-American Water Company for emergency relief from condition ''e'' of Docket D–86–82 CP concerning conservation releases from Rock Run Reservoir and to amend Docket D–96–16 CP by the addition of a new condition ''s;'' a resolution regarding a request by the Pennsylvania American Water Company and the Chester County Water Resources Authority for emergency relief from condition ''d'' of Docket D–87–35 CP; and a resolution amending the *Comprehensive Plan* and *Water Code* relating to the Lake Wallenpaupack Drought Operating Plan.

The dockets scheduled for public hearing are as follows:

1. *Unitech Services Group, Inc. D–99–7.* A project to construct a new outfall from the applicant's existing tertiary treatment plant to discharge 0.08 million gallons per day (mgd) of treated industrial laundry wastewater to the Schuylkill River in Royersford Borough, Montgomery County, Pennsylvania. The treated effluent is currently routed to the Royersford Borough sewage treatment plant (STP). The project will enable the STP to receive additional flow from development within its service area.

2. *Burlington Township D–99–50 CP.* A ground water withdrawal project to supply up to 25.95 mg/30 days of water to the applicant's distribution system from new Well No. 7 and to increase the withdrawal limit from all wells from 98.2 mg/30 days to 113 mg/30 days. The project is located in the Assiscunk and Delaware River Watersheds in Burlington Township, Burlington County, New Jersey.

3. *East Goshen Municipal Authority D–2000–30 CP.* A project to expand the applicant's existing Ridley Creek secondary treatment 0.4 mgd STP to 0.75 mgd. The STP is located approximately 600 feet southeast of the intersection of Route 352 and Boot Road in East Goshen Township, Chester County, Pennsylvania and will continue to serve portions of East Goshen and Willistown Townships, both in Chester County, Treated effluent will continue to discharge to the non-tidal portion of Ridley Creek, a tributary of the Delaware River.

However, up to 0.135 mgd of treated effluent will be seasonally utilized for irrigation of the proposed Applebrook Golf Course to be located on the former Smith-Kline-Beecham/Pfizer tract in East Goshen Township.

4. *Summit Management & Utilities, Inc. D–2001–56 CP.* A ground water withdrawal project to supply up to 14 mg/30 days of water to both the applicant's water supply distribution system and for golf course irrigation from new Well No. 3, in the Polar Gap Member of the Catskill Formation, and to limit the total allocation from existing Wells Nos. 1 and 2 and New Well No. 3 to 22.4 mg/30 days. Irrigation of the golf course will be sourced from both Well No. 3 and wastewater effluent from an existing STP. The project is located in the Tunkhannock Creek Watershed in Kidder Township, Carbon County, Pennsylvania.

5. *Jeffsonville Golf Course D–2002–30 CP.* A ground water withdrawal project to supply up to 8.64 mg/30 days of water to the applicant's golf course from new Wells Nos. PW–1 and PW–3 in the Stockton Formation, and to limit the existing withdrawal from all wells to 8.64 mg/30 days. The project is located in the Indian Creek Watershed in West Norriton Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Waymart Area Authority D–2002–32 CP.* A project to expand a 0.21 mgd STP to process 0.715 mgd, while continuing to provide tertiary treatment. The expanded plant will serve Waymart Borough and a portion of Canaan Township, both in Wayne County,

Pennsylvania. The project is located on the northern shore of Lake Ledore, approximately one mile southeast of the intersection of Interstate Highway 6 and State Route 296. Treatment plant effluent will continue to be discharged to Van Auken Creek in the drainage area of the Delaware River Basin Commission Special Protection Waters, but a new outfall will be provided.

In addition to the public hearing items, the Commission will address the following at its 1:30 p.m. business meeting. Minutes of the August 28, 2002 business meeting; announcements; a report on Basin hyrologic conditions; a report by the Executive Director; a report by the Commission's General Counsel; a resolution concerning the drought emergency declared by the Commission on December 18, 2001; and a resolution authorizing the Executive Director to enter into an agreement with the National Park Service for Development of a Tri-State Watershed Management Plan for the Delaware Water Gap National Recreation Area. The meeting will conclude with an opportunity for public dialogue.

The Commission's draft dockets and draft resolutions scheduled for public hearing on October 16, 2002 are posted on the Commission's web site, *http://www.drbc.net,* where they can be accessed through the Notice of Commission Meeting and Public Hearing. Documents relating to the dockets and other items may be examined at the Commission's offices. Please contact Thomas L. Brand at 609–883–9500 ext. 221 with any docket-related questions. Persons wishing to testify at this hearing are requested to register in advance with the Commission Secretary at 609–883–9500 ext. 203.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission may accommodate your needs.

Dated: October 1, 2002.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 02–25441 Filed 10–4–02; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF ENERGY

Final Report Implementing Office of Management and Budget Information Dissemination Quality Guidelines

AGENCY: Office of the Chief Information Officer, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE gives notice of the final report to the Office of Management and Budget (OMB) that contains final DOE guidelines setting forth policy and procedures to ensure and maximize the quality, utility, objectivity, and integrity of the information that DOE disseminates to members of the public. DOE has prepared this final report pursuant to OMB government-wide guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Act) (Pub.L. 106–554, 114 Stat. 2763).

DATES: The guidelines in the final report to OMB are effective October 1, 2002.

ADDRESSES: The final DOE report and guidelines in this notice are available on the web site of the DOE Chief Information Officer (CIO) at *http://cio.doe.gov/informationquality*.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Information Officer, Attention: Ms. Deborah Henderson, U.S. Department of Energy, Room 8H–089, 1000 Independence Avenue, SW., Washington, DC 20585; *toby.henderson@hq.doe.gov;* (202) 586–5606.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The final report and guidelines in this notice are in response to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Act. DOE's final guidelines apply to a wide variety of information disseminated to members of the public. The DOE final guidelines are modeled on the OMB guidelines with modifications specific to DOE. The principal modifications with explanations, are as follows:

1. DOE inserted the definitions before the operative portions of its final guidelines, and in order to enhance readability, opted to relocate some of the language in the OMB definitions (namely, that which provided policy as distinguished from strictly definitional material) among the operative sections of the guidelines.

2. DOE included general pre-dissemination review procedures which would provide for the originating DOE office to review information in light of the quality standards in the OMB and DOE guidelines and, in appropriate cases, for higher level internal review of the originating office's conclusions to ensure that the procedures are followed.

3. DOE included its own definition of ''influential'' when that term is applied to financial, scientific, or statistical information. Under the OMB guidelines, ''influential'' information of that type is supposed to meet the highest standards of quality and transparency (consistent with countervailing considerations such as confidentiality) and data must be capable of reproduction by a qualified individual outside of the agency. DOE decided to define ''influential information'' as information that DOE routinely embargoes because of its potential effect on markets, information on which a regulatory action with a $100 million per year impact is based, and other information products on a case-by-case basis. Routine embargo information occurs with regard to certain of the information products of DOE's Energy Information Administration. Currently, only some of the appliance energy conservation standards rulemakings under the Energy Policy and Conservation Act (42 U.S.C. 6295) have $100 million impacts on the economy. While DOE is committed to maintaining high standards of quality for all of its information products aimed at the public, DOE is not of the view that the impact of other information products warrants holding them to the most rigorous standards of transparency and reproducibility.

4. DOE included mandatory procedures, including content requirements, to be followed by members of the public in submitting requests for correction of information under the guidelines. With respect to information related to DOE documents subject to public comment, members of the public generally would have to submit requests for correction in the form of timely comments to ensure their consideration. However, the final guidelines allow for the possibility of DOE consideration of late-filed requests for correction. They also provide specifically for requests for correction applicable to final rules and final environmental impact statements. With respect to DOE documents that are not subject to public comment, members of the public would be required to submit requests for correction to the DOE CIO who would direct the request to the originating DOE program office. That office should provide at least an initial response within 60 days. A member of the public could request review of an

adverse initial response through the DOE CIO. The CIO would direct the request for review to a higher level official of the DOE program office to whom the originating program office reports for a final decision (in which the DOE Office of General Counsel must concur) within 60 days.

5. Consistent with the OMB guidelines, DOE has modified the portion of the DOE guidelines calling for use of the criteria in the Safe Drinking Water Act Amendments of 1996 (SDWAA) (42 U.S.C 300g-1(b)(3)(A) and (B)) in the preparation of risk assessments. The modified guidelines specify criteria adapted from the SDWAA, applicable to information containing analyses of risks to human health, safety, and the environment.

II. Response to Public Comments and Modifications to Draft DOE Guidelines

Authority of OMB Guidelines. DOE received a comment arguing that DOE should ignore the definitions of ''dissemination'' and ''information'' in the OMB guidelines because, in the view of the commenter, OMB has no discretion under section 515 to exempt categories of information from the data quality guidelines. DOE also received comments arguing that DOE should disregard the OMB guidelines and rely instead on standards in the text of section 515 when DOE responds to a request for correction. DOE rejects these comments because section 515 does not apply directly to agencies. Rather, it grants OMB authority to issue directives to agencies, which are binding on the agencies as a matter of internal Executive Branch administration. Specifically, subsection (a) of section 515 requires OMB to issue government-wide information quality guidelines, and subsection (b) of section 515 requires that OMB include in its guidelines a requirement for agencies to ''establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a).'' Thus, section 515 specifically contemplates that compliance with section 515 in responding to requests for correction will be evaluated against the OMB guidelines and not the terms of section 515 itself.

Applicability of DOE guidelines. DOE's draft guidelines stated that they applied to information disseminated or re-disseminated on or after October 1, 2002. A commenter urged DOE to clarify the applicability of its guidelines by substituting the phrase ''information that is still being disseminated by DOE on or after October 1, 2002.'' DOE decided to clarify the applicability of its guidelines by using the phrase ''information that is disseminated by DOE on or after October 1, 2002, regardless of when that information was first disseminated.''

Adjudicatory exemption. Consistent with the OMB guidelines, the DOE draft guidelines would exempt from the definition of ''dissemination'' documents related to adjudicatory proceedings in which there is an opportunity for trial-type proceedings to test information quality. In order to clarify the scope of the exemption, DOE has added examples. The examples are documents made available to the public in connection with a formal adjudicatory proceeding by the Nuclear Regulatory Commission to license a DOE facility and documents distributed to the public in Bonneville Power Administration ratemaking proceedings.

Supplemental DOE Element guidelines. The DOE draft guidelines authorize DOE Elements to adopt supplemental guidelines consistent with OMB and DOE guidelines. One of the comments argued that DOE Elements should be required to propose their supplemental guidelines for public comment because of the notice and comment rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). DOE does not believe this is necessary because the draft guideline provision in question concerned the ''process'' the DOE Element would follow for reviewing information quality. These supplemental guidelines will contain either procedures or non-binding general statements of policy. Both types of policy are explicitly exempt from notice and comment rulemaking (5 U.S.C. 553(b)(A)).

Timely correction of information errors in documents subject to public comment. The DOE draft guidelines provided for the possibility of preliminary responses to requests for correction with regard to documents made available for public comment at an early stage in a proceeding. One of the comments questioned whether DOE's omission of a 60 day deadline for responding to a request for correction with regard to a document subject to public comment was inconsistent with the requirement in the OMB guidelines for ''timely'' responses. The commenter argued that there is a need for prompt responses because information disseminated by agencies in connection with a proposal can do significant harm. This suggestion of potential significant harm is speculative; notably, the commenter did not offer any example to support the argument. While commenters sometimes criticize the information on which DOE bases its proposed rules and draft environmental impact statements, DOE has never received a request to expedite a proceeding or otherwise withdraw information in question because of significant harm attributable to delay in taking final agency action. From time to time, DOE has received a comment so persuasive in criticizing the factual basis for a proposal that DOE decided either to repropose or to extend or reopen the comment period in a **Federal Register** notice describing the comment, stating DOE's preliminary reaction to the comment, and offering additional information or new policy options for comment. Although DOE has never experienced a case of significant harm that warranted an early definitive response to a comment, DOE is aware that other agencies may have experienced a rare case in which imminent harm of a significant nature might justify such a response. In supplemental guidance issued after the close of DOE's comment period on its draft guidelines, OMB recommended that agencies provide for consideration of request for correction prior to final agency action in appropriate circumstances. Consistent with that guidance and DOE's prior practice, DOE has modified its draft guidelines at paragraph IV.A.1.(C) to provide for consideration of a prompt, albeit preliminary, response on the merits to a request for correction if the requester adequately justifies the necessity for such a response.

Late-filed requests for correction of documents subject to public comment. DOE's draft guidelines would require members of the public to file requests for correction during the comment period. The draft guidelines were silent as to how DOE would treat late-filed requests for correction, and some of the commenters argued for greater flexibility or against any restriction to the comment deadline. DOE believes requests for correction in a notice and comment rulemaking should be treated the same way as comments under other crosscutting statutory requirements such as the Regulatory Flexibility Act. Accordingly, DOE responded to these commenters by providing in paragraph IV.A.1.(D) that DOE may consider late-filed requests for correction comments ''to the same extent that DOE considers late-filed comments and time permits such consideration.'' DOE has long had a practice of considering late-filed comments but has always reserved, and continues to reserve, the discretion to

disregard such comments in appropriate circumstances.

Petitions for rulemaking and supplemental environmental impact statements. The DOE draft guidelines would require members of the public to file requests for correction of a final rule in the form of a petition for rulemaking and of a final environmental impact statement in the form of a petition for a supplemental environmental impact statement. One of the comments criticized this provision as overbroad and unnecessary because there will be times when the request for correction does not seek a change in the rule or the environmental impact statement. DOE has addressed this comment by limiting the requirement to file these requests for correction as petitions for rulemaking or for a supplemental environmental impact statement to circumstances in which the request for correction is actually aimed at changing the rule or the environmental impact statement. DOE's final guidelines impose the obligation to petition for a supplemental environmental impact if the person requesting the correction is claiming that there are significant new circumstances or information as provided in the governing Council on Environmental Quality regulations (40 CFR 1502.9(c)(1)(ii)).

Burden of demonstrating need for correction. The DOE draft guidelines proposed to place on the person requesting a correction the ''burden of proof'' to demonstrate the need for a correction. One commenter objected to this provision as an unreasonable disincentive and hurdle on request for corrections but did not explain why the provision is unreasonable. Another comment accepted the desirability of this provision but argued that DOE should add explicitly that it has the burden of maintaining an ''administrative record'' demonstrating that the information at issue complies with the OMB guidelines. DOE rejects the first comment out of concern that removing a burden to justify will promote frivolous requests. Anyone who requests a correction under the OMB and DOE guidelines should be required to explain the basis for the request as a prerequisite to any agency diversion of resources to respond. DOE rejects the second comment in part because the term ''administrative record'' is suggestive of the availability of judicial review. Also, the OMB and DOE guidelines require documentation of DOE action in response to a request for correction, and any additional recordkeeping requirements could be overly burdensome. In today's final guidelines, DOE has changed the term ''burden of proof'' to ''burden of justification'' because the former may misleadingly suggest that requests for correction should be focused on evidentiary standards and trial-type procedures rather than the need to correct information.

Definition of ''influential information.'' Consistent with the OMB guidelines, DOE defined the term ''influential information'' as information disseminated in connection with major rulemakings and information that is subject to embargo because of potential immediate effects on markets. DOE's draft definition also provided for a case-by-case designation of information as ''influential.'' One of the comments argued that case-by-case designations should be guided by OMB's tentative definition of ''influential information'' in its guidelines. OMB's definition referred to information that will have or does have a ''clear and substantial impact on important public policies or important private sector decisions.'' In DOE's view, OMB's language does not provide a clear enough line for consistent and efficient administration of the ''influential information'' concept in the DOE context. DOE prefers to gain experience in applying its own definition before deciding whether that definition needs to be supplemented with additional criteria to govern case-by-case designations of ''influential information.''

Non-DOE information. Consistent with the OMB guidelines, DOE's guidelines apply to third party information that is either relied on or endorsed by DOE. Two commenters urged that DOE modify its draft DOE guidelines to cover third party data submissions that DOE neither relies on nor endorses and information disseminated by national laboratories under their own names. DOE rejects these comments because the OMB guidelines do not direct that agency guidelines shall apply to information produced by other entities that is neither relied on nor endorsed by the agency. Moreover, DOE is of the view that the limited resources available should be focused on addressing the quality of information that DOE relies on or endorses.

Definition of ''affected person.'' The OMB guidelines direct agencies to devise a request for correction procedure for ''affected persons'' (as defined by the OMB guidelines). DOE, however, omitted that definition in its draft guidelines and elected to allow any persons to submit requests for correction. DOE omitted the definition because it believes the underlying purpose of section 515 of the Act is to improve the quality of agency information whether or not the information has effects on particular individuals. A commenter argued in favor of a broad definition of ''affected person'' in order to lower what the commenter perceived as a potential hurdle to requests for correction. DOE believes its omission of the term ''affected person'' eliminates the potential hurdle entirely and that it has therefore gone beyond what this commenter suggested.

Separation of functions. The DOE draft guidelines provide for a prominent role for the originating office in processing requests for correction. With respect to requests filed in connection with notice and comment rulemaking and environmental impact statements, and with respect to appeals from initial decisions on requests for correction of information in documents not subject to public comment, DOE senior officials with concurrence from the DOE Office of General Counsel will make the final decision. Some commenters objected to the role of the originating office and argued that decisionmaking responsibility be assigned to an office independent of the originating office. DOE rejects these comments for several reasons. First, the OMB guidelines do not require or even contemplate separation of functions. Second, OMB has issued supplementary guidance indicating its approval of procedures involving a prominent role for agency Offices of General Counsel to assist agencies in following the directives of the OMB guidelines. Third, originating offices should be given the opportunity to correct erroneous information in the first instance since they are responsible for the information in question and are especially knowledgeable about the quality basis for the information.

Confidential information. Consistent with the OMB guidelines, the draft DOE guidelines provide for use of confidential information if necessary. A commenter argued that agencies should adopt a general prohibition against use of what the commenter described as ''third party proprietary models.'' The commenter further argued that if such a model must be used, the agencies should have the burden of demonstrating to OMB that no other option is available before contracting to use the model. DOE rejects this comment because: (1) The OMB guidelines do not require agencies to adopt such a policy; (2) the policy would be inconsistent with Executive Order 12866 which requires OMB clearance only of significant regulatory actions; and (3) the policy would be too restrictive. In the appliance energy

conservation standards program under the Energy Policy and Conservation Act (42 U.S.C. 6295), DOE contracts with a third party to collect individual company data under arrangements providing for the third party to provide aggregate data only to DOE. This arrangement enhances the willingness of individual companies to divulge proprietary information, and DOE does not believe it should adopt a procedure to prohibit or otherwise jeopardize a data collection effort that is essential to carry out DOE's substantive standard-setting mandates under the Energy Policy and Conservation Act (or for that matter DOE's substantive mandates under any other statutory authority).

Reasonableness of 60-Day Decision Deadlines. With respect to information that is not subject to public comment, the DOE draft guidelines provide for 60 days as a goal for an initial decision and for appeals from an initial decision. A commenter argues that 60 days is too long and would undermine the effect of attempting to obtain corrective action. DOE disagrees for two reasons. First, the comment does not offer any example to demonstrate that a 60-day target would undermine the effect of attempting to obtain corrective action. Second, the 60-day target gives necessary time to carefully consider a request for correction and formulate and internally review a response while at the same time carrying out other, unrelated, and possibly priority duties. DOE draws support for the 60-day target from OMB supplemental guidance indicating the OMB is of the view that 60 days is a reasonable target period of time to arrive at a decision.

Paperwork Reduction Act. In its draft guidelines, DOE provided for DOE Elements to demonstrate that information collections will comply with the OMB and DOE guidelines when requesting clearance of new information collections. A commenter criticized this provision as wasteful and counterproductive because agencies are already required to demonstrate ''practical utility'' for proposed information collections. DOE disagrees because if the information to be collected is intended for dissemination to the public, the formulation of the information collection should appropriately take the OMB and DOE guidelines (including the basic standard of quality which goes beyond utility) into account.

Definition of ''peer review.'' Consistent with the OMB guidelines, the DOE draft guidelines provide for peer review in certain circumstances such as risk assessments. One comment criticized the term ''peer review'' as vague, and suggested that DOE adopt a definition for that term. In DOE's view, there is no need for a definition of the term ''peer review'' since the OMB guidelines are explicit about the elements of adequate ''peer review.''

Information request docket. Consistent with the OMB guidelines, the DOE draft guidelines provide for annual reporting of actions on requests for correction but did not provide for a public docket at a DOE web site giving the current status of all requests for correction. One comment urged that the DOE guidelines should provide for such a docket. While the DOE CIO will maintain a web site with essential information for members of the public who want to file a request for correction or to print out the DOE guidelines, DOE declines to allocate scarce resources for the expensive, labor intensive effort the commenter requests. DOE's limited resources should be focused exclusively on complying with DOE's obligations under the OMB guidelines' directives.

Responding to requests for consideration. The DOE draft guidelines do not commit DOE to particular courses of action in responding to requests for consideration that concern information that is incorrect. One of the comments argued for an inflexible policy of correcting the information. DOE declines to accept this comment because the appropriate course of action should be determined in light of the particular facts and circumstances. In some instances, an acknowledgment of error may be all that is necessary, the document in question may not be subject to correction (*e.g.*, effective final rules appliance energy conservation standards subject to 42 U.S.C. 6295(o)), and other measures may be needed to address any errors.

Effect of DOE guidelines on DOE Elements. The DOE guidelines do not purport to impose legally binding substantive policies on DOE Elements. A commenter argues that the DOE guidelines should be binding on DOE Elements. DOE rejects this comment because the DOE information collection procedures are not substantive rules and should therefore not be binding as such.

Substitute information. The DOE draft guidelines provide that members of the public must validate, insofar as they can, any information offered for DOE to adopt consistent with the OMB and DOE guidelines. A commenter argued against this provision because it is a disincentive to filing a request for correction. DOE rejects this comment because the procedures do not impose any obligation to submit substitute information and because those members of the public who do submit such information should make the case for the higher quality of the information they think DOE should adopt.

Complexity of procedures. The DOE draft guidelines contain specific procedures for members of the public to follow. One commenter criticized these procedures as complex and argued generally for simplification without offering any specifics. The procedures are a function of the variety of contexts in which DOE disseminates information and the omission of detailed procedures in section 515 of the Act and the OMB guidelines. DOE does not believe that its procedures are complex or difficult to understand or follow.

Risk assessments. Consistent with the OMB guidelines, DOE considered whether to add a variation of the criteria in the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g-1(b)(3) (A) and (B)) to its guidelines for preparing environmental risk assessments. In its notice inviting public comment on the draft guidelines, DOE stated that it was considering whether to add separate procedures intended to foster the preparation of comprehensive, informative and understandable ecological risk assessments, in addition to procedures for health risk assessments. One of the comments supported this approach but urged that DOE's proposal be modified to emphasize a number of elements that the commenter believed would add rigor, *e.g.*, analysis of local populations of biota. DOE rejects this comment because the purpose of these guidelines is to provide general guides for the preparation of quality documents, not to mandate, or even to suggest a specific approach for risk assessment. DOE believes it should retain the discretion to tailor its assessment methodology so that it is appropriate for a given situation. DOE therefore revised its original proposal to make clear that it is a procedural guideline of general applicability and not intended as a policy statement with respect to analytic methodology. Given the general suitability of the criteria that DOE has included in today's final guidelines, DOE has concluded that there is no need for separate criteria for health and ecological risk assessments.

Other comments. DOE received other comments that raise issues outside the scope of this proceeding or do not offer specific suggestions for improving the DOE draft guidelines. Although the purpose of this proceeding is to establish procedures and a general statement of policy under the OMB guidelines, some commenters sought to have DOE reconsider substantive energy policies with which they disagree.

Others raise questions about generic procedures that should be addressed to OMB such as a consistent policy regarding dissemination of information developed by an interagency risk assessment consortium committee and inclusion of information quality as a performance goal in performance plans under the Government Performance and Results Act. DOE has not responded to the issues these extraneous comments raise because they are out of scope or irrelevant.

III. OMB Review

Consistent with the OMB guidelines, DOE submitted this notice to OMB for review. OMB has completed its review.

Issued in Washington, DC on October 1, 2002.

Karen S. Evans,

Chief Information Officer.

Final Report to the Office of Management and Budget on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Energy

Introduction

This report is submitted to the Office of Management and Budget (OMB) by the Department of Energy (DOE) pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub.L. 106–554, 114 Stat. 2763). The report includes DOE's guidelines to implement the policies and procedural guidance set forth in the OMB guidelines.

Background

DOE is responsible for the administration of a wide variety of national defense, energy supply, energy conservation, and nuclear waste cleanup programs authorized by law. DOE administers a system of national laboratories with active scientific research programs. DOE also disseminates a large volume of statistical reports through its Energy Information Administration. Although DOE is not a major regulatory agency, DOE has some rulemaking mandates and authorities, such as the appliance energy conservation program of test procedures and standards, that require the dissemination of financial, scientific, and statistical information. Like other agencies, DOE publishes draft and final environmental impact statements and environmental assessments under the National Environmental Policy Act, 42 U.S.C. 4321–4347.

Discussion of Guidelines

DOE has always maintained high standards of quality in the production of information disseminated to members of the public. As a source of scientific and statistical information on which members of the public and other government officials rely, DOE has long had procedures to assure adequate information quality. DOE's Energy Information Administration is a leader in this regard and has elaborate procedures to ensure the quality of its information products. DOE's Office of Energy Efficiency and Renewable Energy has elaborate special procedures for some of its rulemakings. That office has codified a general statement of policy in Appendix A to Subpart C of 10 CFR Part 430 with regard to its information quality review procedures for information used in its appliance energy conservation standards rulemakings.

The DOE guidelines set forth below are modeled on OMB guidelines and incorporate a basic standard of quality (including objectivity, utility, and integrity) in the development and dissemination of DOE or DOE-sponsored information to the public. They also incorporate the procedures that DOE has traditionally followed to review information products for adequate quality. In addition, the DOE guidelines provide a uniform set of procedures for members of the public who wish to request correction of information on a timely basis. These procedures will ensure that final DOE decisions with respect to requests for correction will be made by high-level management officials with the concurrence of the DOE Office of General Counsel.

DOE notes that section 515 establishes procedures and performance goals for the internal management of the Executive Branch. While seeking to establish a process that assures that DOE is attentive to the issue of information quality, neither section 515 nor the OMB Guidelines nor DOE's own Guidelines provide for judicially manageable standards regarding the quality of information that the agency may disseminate. Therefore, neither section 515 nor the OMB Guidelines nor DOE's Guidelines create private rights or contemplate judicial oversight of its directives through judicial review. Rather, the statute contemplates internal executive branch management of its directives, as evidenced by its directive to each agency to ''report periodically to the Director'' of OMB concerning ''(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and (ii) how such complaints were handled by the agency.'' DOE's Guidelines likewise contemplate that internal executive branch management will be the mechanism for meeting the objectives of section 515.

The DOE Guidelines were prepared by the DOE Chief Information Officer, who is responsible for coordinating DOE's response to OMB's guidelines, in cooperation with other affected DOE offices. They have been approved by the Secretary of Energy.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public by the Department of Energy

I. Background

Section 515, Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), directed the Office of Management and Budget (OMB) to issue government-wide guidelines that ''provide policy and procedural guidance to Federal Agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal Agencies.'' The OMB guidelines, published in the **Federal Register** on February 22, 2002 (67 FR 8452), direct agencies to issue by October 1, 2002, their own implementing guidelines that include administrative mechanisms allowing members of the public to seek and obtain correction of information disseminated by the agency that does not comply with the OMB or agency guidelines.

The Department of Energy (DOE) Information Quality Guidelines, issued by the Department's Chief Information Officer (CIO) pursuant to OMB's Guidelines, are intended to provide guidance to Departmental Elements (*i.e.*, major DOE offices) on maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated to the public.

The DOE Guidelines also establish mechanisms for members of the public to seek and obtain administrative correction of disseminated information that does not comply with the quality requirements of these Guidelines. Finally, the Guidelines explain how the CIO will comply with OMB's annual

reporting requirement concerning complaints from members of the public.

The DOE Information Quality Guidelines are effective on October 1, 2002.

II. Introduction

The CIO has designed these Guidelines to apply to a wide variety of DOE information dissemination activities that may range in importance and scope. They are intended to be sufficiently generic to fit all media, printed, electronic, or other forms. The CIO has sought to avoid the problems that would be inherent in developing detailed, prescriptive, ''one-size-fits-all'' DOE-wide guidelines that would artificially require different types of dissemination activities to be treated in the same manner.

The Guidelines are designed so that DOE Elements can apply them in a common sense and workable manner. It is important that these guidelines not impose unnecessary administrative burdens that would inhibit DOE Elements from continuing to take advantage of the Internet and other technologies to disseminate information to the public. In this regard, DOE Elements may incorporate the standards and procedures required by these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes. DOE Elements may rely on their implementation of the computer security provisions of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.*, to establish appropriate security safeguards for ensuring the integrity of the information that they disseminate.

III. DOE Information Quality Guidelines

A. What Definitions Apply to These Guidelines?

1. *DOE Element* means a major DOE office headed by an official whose position is subject to Senate confirmation or an office which directly reports to the Secretary, Deputy Secretary, or either of the DOE Under Secretaries.

2. *Dissemination* means DOE Element initiated or sponsored distribution of information to the public.

3. *Influential* means, when used in the context of scientific, financial, or statistical information, information (1) that is subject to embargo until the date of its dissemination by the Department or DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as ''influential.''

4. *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, including information that a DOE Element disseminates from a web page, but excluding the provision of hyperlinks to information that others disseminate.

5. *Information dissemination product* means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, a DOE Element disseminates to the public, including any electronic document, CD–ROM, or web page.

6. *Integrity* means the information has been secured and protected from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

7. *Objectivity* means the information is presented in an accurate, clear, complete, and unbiased manner and the substance of the information is accurate, reliable, and unbiased.

8. *Quality* means utility, objectivity, and integrity.

9. *Reproducibility* means capability of being substantially reproduced, subject to an acceptable degree of imprecision, and with respect to analytical 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.

10. *Subject to public comment* means that DOE has made the information available for comment by members of the public, preliminary to making a final determination, through a notice in the **Federal Register** including, but not limited to, a notice of inquiry, an advance notice of proposed rulemaking, a notice of proposed rulemaking, a notice reopening or extending a comment period due to receipt of new information, a notice of availability of a draft environmental impact statement, a notice of a proposed information collection, or any other **Federal Register** notice that provides an opportunity for comment by members of the public regarding the quality of information on which a final determination may be based.

11. *Utility* means the usefulness of the information to its intended users, including the public.

B. Which public disseminations of information are and are not subject to these Guidelines?

These Guidelines apply to any public dissemination of information. The definitions of ''information'' and ''dissemination'' establish the scope of the applicability of the guidelines. ''Information'' means ''any communication or representation of knowledge such as facts or data.'' Consequently, ''information'' does not include opinions.

''Dissemination'' is defined to mean agency initiated or sponsored distribution of information to the public, including, for example, a risk assessment prepared by a DOE Element to inform the agency's formulation of possible regulatory or other action. A DOE Element does not ''initiate'' the dissemination of information when a Federally employed scientist or Federal grantee or contractor publishes his or her research findings, even if the DOE retains ownership or other intellectual property rights because DOE paid for the research. In such cases, to avoid confusion, the DOE Element should ensure that the researcher includes an appropriate disclaimer that the views are the researcher's and do not necessarily reflect the views of DOE. However, if a DOE Element directs a Federally employed scientist or Federal grantee or contractor to disseminate information and retains authority to review and approve the information before release, then the DOE Element has sponsored the dissemination of the information.

''Dissemination'' also does not include the following distributions:

(1) Press releases, including but not limited to fact sheets, press conferences or similar communications in any medium that announce, support the announcement or give public notice of information a DOE Element has disseminated elsewhere;

(2) Any inadvertent or unauthorized disclosure of information intended only for inter-agency and intra-agency communications;

(3) Correspondence with individuals or persons;

(4) Testimony and other submissions to Congress containing information a DOE Element has disseminated elsewhere;

(5) Responses to requests for DOE records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar laws;

(6) Information in public filings (such as public comments received by DOE in rulemaking proceedings), except where the DOE Element distributes information submitted to it by a third party in a manner that suggests that the DOE Element endorses or adopts the information, or indicates in its distribution that it is using or proposing to use the information to formulate or support a regulation, guidance, or other DOE Element decision or position.

(7) Information contained in subpoenas or documents filed in connection with adjudicative proceedings (characterized by trial-type procedures with opportunity to test information quality), including DOE adjudicatory orders, opinions, amicus and other briefs, documents filed in Bonneville Power Administration's ratemaking proceedings, and documents submitted for purposes of a Nuclear Regulatory Commission licensing proceeding for a DOE facility;

(8) Procedural, operational, policy and internal manuals and memoranda prepared for the management and operation of DOE Elements that are not primarily intended for public dissemination;

(9) Archival records (including information made available to the public on a DOE web site to document historical DOE actions); and

(10) Communications intended to be limited to government employees or DOE contractors or grantees.

C. What Are the Responsibilities of DOE Elements for Ensuring Quality of Information Disseminated to the Public and Responding to Requests From Members of the Public for Correction of Information?

1. Ensuring Quality

As a guiding principle, DOE Elements should have as a performance goal that information disseminated to the public meets a basic level of quality. The quality of information disseminated by DOE Elements is measured by its utility, objectivity, and integrity. ''Objectivity'' focuses on whether the disseminated information is being presented in an accurate, clear, complete and unbiased manner and as a matter of substance, is accurate, reliable and unbiased. This includes whether the information is presented in the proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.

Also, DOE Elements should (to the extent possible, consistent with security, privacy, intellectual property, trade secrets, and confidentiality protections) identify the sources of the disseminated information and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where feasible, data should have full, accurate, transparent documentation, and possible sources of error affecting data quality should be identified and disclosed to users.

In addition, ''objectivity'' involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data should be generated, and the analytical results developed, using sound statistical and research methods. If the data and analytical results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by a member of the public seeking correction of information in a particular instance. If DOE Element-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed should meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs to the President's Management Council (http://www.whitehouse.gov/omb/inforeg/oira_review-process.html), namely ''that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.''

Influential information. If a DOE Element is responsible for disseminating and disseminates influential scientific, financial information, a high degree of transparency of data and methods should be ensured to facilitate the reproducibility of such information by qualified third parties. ''Influential'' when used in the context of scientific, financial or statistical information, means information: (1) That is subject to embargo until its dissemination by DOE or a DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as ''influential.''

With regard to original and supporting data related thereto, these Guidelines do not direct that all disseminated original and supporting data be subjected to the reproducibility requirement applicable to influential information. DOE Elements may identify, in consultation with the relevant scientific and technical communities, those particular types of data that may practicably be subjected to the reproducibility requirement, given ethical, feasibility, confidentiality, privacy, trade secret, security, and intellectual property constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.* a new experiment, test, or sample) should not be required prior to each dissemination. At a minimum, DOE Elements should assure reproducibility for those kinds of original and supporting data according to ''commonly accepted scientific, financial, or statistical standards.''

With regard to analytic results related thereto, DOE Elements generally should demonstrate sufficient transparency about data and methods that an independent reanalaysis could be undertaken by a qualified member of the public. These transparency standards apply to analysis of data from a single study as well as to analyses that combine information from multiple studies.

Making the data and models publicly available will assist in determining whether analytical results are capable of being substantially reproduced. However, the objectivity standard does not override other compelling interests such as privacy, trade secret, security, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, DOE Elements should apply rigorous robustness checks to analytic results and document what checks were undertaken. DOE Elements should, however, disclose the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. However, each DOE Element should define the type of robustness checks and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the DOE Element is responsible.

With regard to the dissemination of information containing analyses of risks to human health, safety and the environment, it is DOE policy for DOE

Elements in complying with the OMB guidelines to apply the following criteria adapted from the Safe Drinking Water Act Amendments of 1996.

1. Use:

a. The best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and

b. Data collected by accepted methods (if the reliability of the method and the nature of decision justify use of the data).

2. Present information that is comprehensive, informative, and understandable.

3. Specify, to the extent practicable:

a. Each population addressed by any estimate of risk;

b. The expected risk or central estimate of risk for the populations addressed;

c. Each appropriate upper-bound or lower-bound estimate of risk;

d. Each significant uncertainty identified in the process of an assessment of risk and the studies that would assist in resolving the uncertainty; and

e. Peer-reviewed studies known to the DOE Element that support, are directly relevant to, or fail to support any estimate of risk effects and the methodology used to reconcile inconsistencies in the scientific data.

DOE Elements responsible for dissemination of vital health, environmental and medical information should interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information to medical providers, patients, health agencies, and the public.

''Utility'' refers to the usefulness of the information to intended users including the public. In assessing the usefulness of information, DOE Elements need to consider the uses of the information they plan to disseminate not only from their perspective but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, DOE Elements should take care to ensure that transparency has been addressed in its review of the information.

''Integrity'' refers to security—the protection of information from unauthorized access or revision to ensure that information by DOE or DOE Elements is not compromised through corruption or falsification.

Pre-dissemination review procedures. Before disseminating information to members of the public, the originating office of the DOE Element is responsible for ensuring that the information is consistent with the OMB and DOE guidelines and that the information is of adequate quality for dissemination. If the information is influential financial, scientific, or statistical information, then, to the extent practicable, the DOE Element should provide for higher level review of the originating office's conclusions. Each DOE Element should identify for the CIO a high ranking official who is responsible for ensuring the accountability of the DOE Element's program offices in reviewing information to be disseminated to members of the public under the OMB and DOE guidelines.

As a matter of good and effective information resources management, DOE Elements may develop and post on their websites supplemental guidelines for the process they will follow for reviewing the quality (including objectivity, utility and integrity) of information before it is disseminated. DOE Elements should treat information quality as integral to every step of development of information, including creation, collection, maintenance, and dissemination. This process will enable every DOE Element to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

Paperwork Reduction Act. It is important that DOE Elements make use of OMB's Paperwork Reduction Act (PRA) clearance process to help improve the quality of information that the DOE Elements collect and disseminate to the public. DOE Elements already are required to demonstrate in their PRA submissions to OMB the ''practical utility'' of a proposed collection of information the DOE Element plans to disseminate. Additionally, for all proposed collections of information that will be disseminated to the public, DOE Elements should evaluate the proposed collection in light of the OMB and DOE guidelines, and based on that evaluation, state in their PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and DOE information quality guidelines.

2. Responding to Requests From Members of the Public

To facilitate public review of information disseminated to the public, these Guidelines provide procedures allowing members of the public to seek and obtain correction of information disseminated to the public that does not comply with the quality provisions of the OMB and DOE guidelines. The procedures, set out in part IV below, provide separate mechanisms for information set forth or referenced in a DOE or DOE-sponsored document subject to public comment and all other DOE or DOE-sponsored information.

IV. Requests From Members of the Public for Correction of Publicly Disseminated Data

A. How Does a Member of the Public Request Correction of Publicly Disseminated Information?

1. *Requests from members of the public seeking correction of DOE or DOE-sponsored documents subject to public comment, rulemaking notices, and environmental impact statements.*

(A) With respect to information set forth or referenced with endorsement in a DOE or DOE-sponsored document subject to public comment on or after October 1, 2002, a member of the public must request correction within the comment period in a comment that:

(1) Specifically identifies the information in question and the document(s) containing the information;

(2) Explains with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB or DOE guidelines;

(3) Presents substitute information, if any, with an explanation showing that such information is consistent with the applicable quality standards in the OMB and DOE guidelines; and

(4) Justifies the necessity for, and the form of, the requested correction.

(B) A member of the public must file a request for correction of a document subject to public comment at the address for comments set forth in DOE's notice providing for public comment.

(C) If a member of the public requests correction of information set forth or referenced with endorsement in a document subject to public comment prior to publication of the final document and provides a justification of the necessity for an early response, DOE may consider providing a preliminary response including but not limited to a **Federal Register** notice describing the request for correction and reopening the comment period.

(D) If a member of the public files a request for correction under paragraph IV.A.1 of these guidelines after the close of a comment period, DOE may consider the request to the same extent that DOE considers late-filed comments and time permits such consideration.

(E) With respect to information that is set forth or referenced with

endorsement in a notice of final rulemaking or a final regulation disseminated on or after October 1, 2002, (regardless of when first disseminated and regardless of whether there was prior notice and opportunity for public comment), a member of the public:

(1) Must file a request for correction with Office of the Chief Information Officer at the address provided in paragraph IV.A.2 of these guidelines;

(2) Must include in such a request the content required by paragraph IV.A.1 of these guidelines; and

(3) Must file such a request regarding the regulatory text or supporting information that would necessitate changes to the regulatory text as a petition for reconsideration or for regulatory amendments under 5 U.S.C. 553(e).

(F) With respect to information set forth or referenced with endorsement in a final environmental impact statement (and any related portion of a Record of Decision) disseminated on or after October 1, 2002, regardless of when first disseminated, a member of the public:

(1) Must file a request for correction with the Office of the Chief Information Officer at the address provided in paragraph IV.A.2 of these guidelines;

(2) Must include in such a request the content required by paragraph IV.A.1 of these guidelines; and

(3) Must file such a request in the form of a petition for a supplemental environmental impact statement if the petitioner asserts that are significant new circumstances or information as provided for in 40 CFR 1502.9(c)(1)(ii).

(G) With respect to information that is made subject to public comment on or after October 1, 2002, and that is set forth or referenced with endorsement in a DOE notice of final rulemaking or a final environmental impact statement (and any related portions of a Record of Decision), DOE may summarily deny a request for correction as untimely.

(H) A member of the public who files a request for correction under paragraph IV.A.1 has the burden of justification with respect to the necessity for correction as well as with respect to the timing and type of correction requested.

2. *Requests from members of the public seeking correction of DOE or other DOE-sponsored documents.*

(A) With respect to information set forth or referenced with endorsement in a DOE or DOE-sponsored document that is disseminated on or after October 1, 2002, regardless of when the information was first disseminated, and that is not subject to paragraph IV.A.1 of these guidelines, a member of the public must request correction by letter to the Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC. 20585, or via Fax to (202) 586–7966, or by providing the information called for at the CIO Web site: *http://cio.doe.gov/informationquality.* This web site requests the information set forth in paragraph (B) below.

(B) If a member of the public requests correction of DOE or DOE-sponsored information by letter, addressed to the CIO, then the letter must:

(1) Specifically identify the information in question and the document(s) containing the information;

(2) Explain with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB Guidelines or DOE guidelines;

(3) Present substitute information, if any, with an explanation showing that such information is consistent with the OMB guidelines and the DOE implementing guidelines; and

(4) Justify the necessity for, and the form of, the requested correction.

(C) A member of the public who files a request for correction under paragraph IV.A.2 has the burden of justification with respect to the necessity for correction as well as with respect to the type of correction requested.

B. How Does DOE Process Requests for Correction?

1. *Incomplete requests.* If a request for correction is incomplete, DOE may seek clarification from the person submitting the request or return it without prejudice to resubmission.

2. *Public notice of a request for correction.* In selected cases, DOE may publish notice of the receipt of a request for correction and may invite public comment.

3. *Participation by other interested persons.* By letter, DOE may invite or allow other interested persons to comment on a request for correction.

4. *Initial decisions.* If the request for correction concerns information that does not involve a document subject to public comment, then the originating office of the DOE Element responsible for dissemination of the information should provide at least an initial decision within 60 days from the date of receipt. The response should contain a statement of reasons for the disposition. If an initial decision on a request for correction under this paragraph requires more than 60 days, then the DOE Element should inform the requestor that more time is required and indicate the reason why and an estimated decision date.

5. *Administrative appeals.* In the event DOE initially denies a request for correction of information not subject to public comment and the person who submitted the request would like additional review, then that person must submit a request for review, including a statement of reasons for modifying or reversing the initial decision, no later than 30 days from the date of that decision. A request for review under this paragraph must be submitted by e-mail to dictrs.quid@hq.doe.gov or by regular mail to Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7966. The CIO will direct the request for review to the DOE Element which supervises the originating DOE program office, and the DOE Element, with the concurrence of the Office of General Counsel, should issue a final decision for DOE (with a copy to the CIO) within 60 days from the date that the request for review is received. If a final decision on a request for correction under this paragraph requires more than 60 days, then the DOE Element should inform the requestor that more time is required and indicate the reason why and an estimated decision date.

6. Any corrective action will be determined by the nature and timeliness of the information, the magnitude of the error, and the cost of undertaking a correction. DOE Elements are not required to change, or in any way alter, the content or status of information simply based on the receipt of a request for correction. DOE Elements need not respond substantively to frivolous or repetitive requests for correction. Nor do DOE Elements have to respond substantively to requests that concern information not covered by the OMB or DOE Guidelines or from a person who has not justified the necessity for correction.

7. If DOE determines that a request for correction of information not subject to public comment has merit, DOE may respond by correcting the information in question and without issuing a decision explaining the reasons for accepting the request.

8. If DOE receives multiple requests for correction of information not subject to public comment, DOE may consolidate the requests and respond on a DOE web site, or by notice in the **Federal Register**, or by issuing a correction in similar form and manner as the original information was issued.

9. If a member of the public complains about information set forth or referenced with endorsement in a DOE or DOE-sponsored document and does not request correction under the OMB and DOE guidelines, then the complaint is not subject to processing as a request for correction under those guidelines.

10. If a member of the public requests correction of information first disseminated more than one year prior to the request and the information does not have a continuing significant impact on DOE projects or policy decisions or on important private sector decisions, DOE may regard the information as stale for purposes of responding to the request.

11. DOE may devise additional procedures on a case-by-case basis as may be appropriate to process requests for correction.

V. DOE Reporting Requirements

On an annual basis, the Office of the CIO (OCIO) will report to the Director of OMB on the requests for corrections received under these Guidelines. DOE elements must designate a reporting official, except as agreed otherwise between the DOE Element and the OCIO. The OCIO will work with the DOE Element reporting officials to develop the annual OMB report beginning January 1, 2004. The report will include the number of complaints received, nature of complaints (*e.g.*, request for deletion or correction) and how they are resolved (*i.e.*g number corrected, denied, or pending review).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2413–010, et al.]

American Electric Power Service Corporation, et al. Electric Rate and Corporate Filings

September 27, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Service Corporation

[Docket Nos. ER00–2413–010]

Take notice that on September 25, 2002, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP) filed a proposed amendment to its Open Access Transmission Tariff in compliance with the Commission's August 2, 2002 Letter Order, 100 FERC ¶ 61,150 (2002) in the above-referenced docket.

AEP requests an effective date of July 1, 2000 for the proposed amendment. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: October 16, 2002.

2. Continental Electric Cooperative Services, Inc.

[Docket No. ER02–1118–003]

Take notice that on September 25, 2002, Continental Electric Cooperative Services, Inc., submitted to Federal Energy Regulatory Commission a modification to its rate schedule.

Comment Date: October 16, 2002.

3. Just Energy, LLC

[Docket No. ER02–2134–001]

Take notice that on September 25, 2002, Just Energy, LLC (Just Energy) tendered for filing a compliance filing in the above-referenced docket involving Just Energy, LLC Tariff Sheet No. 1.

Comment Date: October 16, 2002.

4. Southern California Edison Company

[Docket No. ER02–2263–001

Take notice that on September 25, 2002, Southern California Edison Company (SCE) tendered for filing a revised rate sheet for its market-based rate tariff (FERC Electric Tariff No. 8). The purpose of this filing is to comply with the Commission's August 29, 2002 Letter Order in the above-referenced case.

Copies of this filing were served upon the Service List compiled by the Secretary in this docket.

Comment Date: October 16, 2002.

5. Ameren Services Company

[Docket No. ER02–2534–001]

Take notice that on September 24, 2002, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Illinois Municipal Electric Company. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER 02–2534–000 with the executed Agreement.

Comment Date: October 15, 2002.

6. Ameren Services Company

[Docket No.ER02–2594–000]

Take notice that on September 24, 2002, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and TECO EnergySource, Inc., Peabody Energy Corporation, Wisconsin Public Service Corporation and PSEG Energy Resources & Trade LLC (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: October 15, 2002.

7. Midwest Independent Transmission System

[Docket No. ER02–2595–000]

Take notice that on September 24, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed Rate Schedules 16 and 17 for incorporation into the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1. The Midwest ISO's proposed Schedules 16 and 17 provide for the collection of costs incurred by the Midwest ISO to provide Financial Transmission Rights (FTRs), establish and implement within its footprint day-ahead and real-time energy markets (Energy Markets) and to facilitate the creation of a joint and common market by and between the Midwest ISO and the PJM Interconnection, L.L.C.

The Midwest ISO has requested an effective date of November 25, 2002.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 with respect to service on all required parties. The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: October 15, 2002.

8. El Paso Electric Company

[Docket No. ER02–2596–000]

Take notice that on September 25, 2002, El Paso Electric Company (EPE) on behalf of itself tendered for filing the executed Shiprock-Four Corners Project

345-kV Switchyard Interconnection Agreement (IA) between the Four Corner Participants and the Interconnection Participants.

The Four Corner Participants consist of the joint owners of a 345-kV Switchyard and include EPE, Arizona Public Service Company (APS), Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company and Tucson Electric Power Company.

The Interconnection Participants consist of Public Service of Colorado, Tri-State Generation and Transmission Association, Inc., and the United States of America acting by and through the Administrator, Western Area Power Administration, Department of Energy. The Interconnection Participants have rights to a 230-kV Shiprock-Four Corners Transmission Line that is being upgraded to 345-kV, and desire an interconnection to the 345-kV Switchyard of the Four Corner Participants. The IA establishes the rates, terms and conditions for installation, operation and maintenance of interconnection facilities related to the Shiprock-Four Corners Project 345-kV Switchyard. Under the terms of the IA, the Interconnection Participants will reimburse APS for the construction costs of the interconnection facilities and these interconnection facilities will permit the relocation of the termination of the Shiprock-Four Corners Transmission Line to the 345-kV Switchyard.

A copy of this filing has been served on parties to the IA, the Public Utility Commission of Texas, the New Mexico Public Regulation Commission, and the United States Department of Agriculture, Rural Utilities Service (''RUS'').

Comment Date: October 16, 2002.

9. PJM Interconnection, L.L.C.

[Docket Nos. ER02–2597–000]

Take notice that on September 24, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing signature pages to the PJM Transmission Owners Agreement (TOA) executed by Rock Springs Generation, L.L.C. (RSG) and CED Rock Springs, Inc. (CEDRS) and a revised Attachment L to PJM's Open Access Transmission Tariff. PJM states that execution of the TOA by RSG and CEDRS follows amendments to the TOA accepted by the Commission on August 22, 2002, in Docket No. ER02–2256–000 and, upon acceptance subject to the proposed effective date, will obviate the need for the Facilities Operation Agreement among PJM, RSG and CEDRS that PJM filed in Docket No. ER02–1726–000 on May 6, 2002. The revised Attachment L adds RSG and CEDRS to the list of PJM Transmission Owners. PJM requests an effective date of April 29, 2002, for the executed signature pages to the TOA and the revised Attachment L.

Copies of this filing were served upon the official service lists of Docket Nos. ER02–1726–000 and ER02–2256–000, all members of PJM, and the state electric utility regulatory commissions within the PJM region.

Comment Date: October 15, 2002.

10. Commonwealth Edison Company

[Docket No. ER02–2598–000]

Take notice that on September 25, 2002, Commonwealth Edison Company (ComEd) submitted for filing four unexecuted Service Agreements entered into between ComEd and NRG Power Marketing Inc. under ComEd's Open Access Transmission Tariff (OATT).

ComEd seeks waiver of the Commission's notice requirements to permit an effective date of January 1, 2002 for all of the Service Agreements. Copies of the filing were served upon NRG Power Marketing Inc. and the Illinois Commerce Commission.

Comment Date: October 16, 2002.

11. Central Power and Light Company

[Docket No. ER02–2599–000]

Public Service Company of Oklahoma
Southwestern Electric Power Company
West Texas Utilities Company

Take notice that on September 25, 2002, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the Companies) submitted for filing a refund report in compliance with the letter order issued July 26, 2002 in the above-referenced dockets (July 26 Letter Order). The July 26 Letter Order established the rates that enable the calculation of refunds required by the Commission's November 8, 2001 order in the above-referenced dockets. Central Power and Light Company, *et al.*, 97 FERC ¶ 61,157 (2001) (Remand Order). The Companies state that a copy of the filing has been served on all parties to this proceeding, all customers under the tariff and the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: October 16, 2002.

12. Laurent Cusson, Richard Legault, Donald Tremblay

[Docket Nos. ID–3695–001, ID–3694–001, and ID–3826–000]

Take notice that on September 23, 2002, Laurent Cusson, Richard Legault and Donald Tremblay submitted to Federal Energy Regulatory Commission (Commission) Abbreviated Applications for Authorization to Hold Interlocking Positions pursuant to Section 305 of the Federal Power Act and Part 45 of the Commission's Regulations.

Comment Date: October 15, 2002.

13. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company

[Docket Nos. OA97–24–008, ER97–881–005, ER98–4609–005, and ER98–4511–006

Take notice that on September 25, 2002, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the Companies) submitted for filing revised pages to the Companies' Transmission Coordination Agreement (TCA). The revised provisions of the TCA govern the allocation of transmission service revenues between the Companies during the locked-in time period from January 1, 1997 to June 15, 2000. These changes to the TCA are needed to reflect the effect of the refunds the Companies were required to make in compliance with the letter order issued July 26, 2002 in Central Power and Light Co., *et al.*, Docket Nos. OA97–24–007, *et al.* (July 26 Letter Order). The July 26 Letter Order established the rates required by the Commission's November 8, 2001 order in the same dockets. Central Power and Light Company, *et al.*, 97 FERC 61,157 (2001).

The Companies state that a copy of the filing has been served on all parties to Docket Nos. OA97–24–000, *et al.*, the Public Utility Commission of Texas, the Louisiana Public Service Commission, the Arkansas Public Service Commission and the Oklahoma Corporation Commission.

Comment Date: October 16, 2002.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25399 Filed 10–4–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2126–000, et al.]

Consolidated Edison Company, et al.; Electric Rate and Corporate Filings

September 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Consolidated Edison Company

[Docket No. ER02–2126–003]

Take notice that on September 23, 2002, Consolidated Edison Company of New York, Inc., (Con Edison) tendered for filing an Amendment to its prior filings in these dockets of an unexecuted Interconection Agreement (Agreement) between Con Edison and PSEG Power in-City I, LLC (PSEG Power), Con Edison's Amendment was filed in response to the letter order issued on August 28, 2002 by the Director, OMTR/Tariffs and Rates—East.

Con Edison states that copies of the filing were served upon PSEG Power, the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: October 15, 2002.

2. PJM Interconnection, L.L.C.

[Docket No. ER02–2519–002]

Take notice that on September 23, 2002, PJM Interconnection, L.L.C. (PJM), submitted for filing an amendment to its August 29, 2002 and September 11, 2002 filings in this docket. In its August 29, 2002 filing, PJM amended the Appendix of Attachment K of the PJM Open Access Transmission Tariff (PJM Tariff) and Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to establish a Spinning Reserve market for PJM and PJM West and new compensation rules. On September 11, 2002 PJM amended its August 29, 2002 filing to include conforming amendments to both the PJM Tariff and Operating Agreement consistent with the Spinning Reserve market and compensation rules. PJM hereby submits one further amendment in light of the implementation of the Spinning Reserve market and compensation rules.

PJM requests an effective date of December 1, 2002 for the amendments filed on August 29, 2002, September 11, 2002, and September 23, 2002. Copies of this filing were served upon all parties listed on the official service list in Docket No. ER02–2519–000, all PJM members, and each state electric utility regulatory commission in the PJM control area and PJM West region.

Comment Date: October 10, 2002.

3. New England Power Company

[Docket No. ER02–2568–000]

Take notice that on September 20, 2002, New England Power Company (NEP) submitted for filing Original Service Agreement No. 214 between NEP and Lake Road Generating Company, L.P. (Lake Road) under NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Original Volume No. 9. The Service Agreement consists of a related facilities agreement between NEP and Lake Road concerning upgrades to transmission facilities operated by NEP in Rhode Island to accommodate the interconnection of Lake Road's new generating station to the transmission system of Connecticut Light and Power in Connecticut.

Comment Date: October 11, 2002.

4. NorthWestern Energy, L.L.C.

[Docket No. ER02–2569–000]

Take notice that on September 20, 2002, NorthWestern Energy, L.L.C. filed with the Federal Energy Regulatory Commission (Commission) a Change in Rate Filing and Request for Certain Waivers.

Comment Date: October 11, 2002.

5. Minnesota Power

[Docket No. ER02–2570–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Biwabik, Minnesota (Biwabik). This filing included revised rates, which would allow Biwabik the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Biwabik's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

6. Avista Corporation

[Docket No. ER02–2571–000]

Take notice that on September 20, 2002, Avista Corporation (Avista), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12 Service Agreement No. 120, which is an Agreement for Firm and Non-Firm Point-to-Point Transmission Service Under Avista Corporation's Open Access Transmission Tariff—FERC

Electric Tariff Volume No. 8 between Avista and Haleywest/Plummer Forest Products (Service Agreement).

Avista respectfully requests that the Commission accept the Service Agreement No. 120 for filing and grant all waivers necessary to allow the Service Agreement No. 120 to become effective September 9, 2002. Plummer is the sole customer affected by this Service Agreement and the waiver, if granted, will not affect any other rate or charge to any other customer.

Copies of the filing were served upon Haleywest/Plummer Forest Products, Inc., the sole party to the Service Agreement.

Comment Date: October 11, 2002

7. Minnesota Power

[Docket No. ER02–2572–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Aitkin, Minnesota (Aitkin). This filing included revised rates, which would allow Aitkin the option purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Aitkin's retail customers. Minnesota Power requests January 1, 2003 as the effective date for the revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; the City of Proctor—Public Utilities Commission (all located in the State of Minnesota0; and b) Resale Service—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested and effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

8. PSEG Energy Resources & Trade LLC

[Docket No. ER02–2573–000]

Take notice that on September 20, 2002, PSEG Energy Resources & Trade LLC (PSEG) of Newark, New Jersey, tendered for filing a letter, together with certain attachments, requesting that the Commission amend the Western Systems Power Pool (WSPP) Agreement to include PSEG ER&T as a participant.

PSEG further requests waiver of the Commission's regulations such that the agreement can be made effective as of the filing date. Copies of the filing have been served upon Michael Small, Esquire, the Executive and Operating Committees of the WSPP and the New Jersey Board of Public Utilities.

Comment Date: October 11, 2002.

9. Minnesota Power

[Docket No. ER02–2574–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Grand Rapids, Minnesota—Public Utilities Commission (Grand Rapids). This filing included revised rates, which would allow Grand Rapids the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Grand Rapids' retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

10. Minnesota Power

[Docket No. ER02–2575–000]

Take notice that on September 20, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Gilbert, Minnesota (Gilbert). This filing included revised rates, which would allow Gilbert the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Gilbert's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 11, 2002.

11. California Independent System Operator Corporation

[Docket No. ER02–2576–000]

Take notice that on September 20, 2002, the California Independent System Operator Corporation (ISO) submitted for filing an update to the Comprehensive Market Design (MD02) proposal contained in Amendment No. 44 to the ISO Tariff (Update) and Request for Expedited Consideration of the Update. For the reasons described below, the ISO respectfully submits that good cause exists for the Commission to undertake expedited action on and grant approval of the proposed clarifications and modifications set forth herein.

This Update would modify the ISO Tariff to: (1) Postpone the effective date for the implementation of Real-Time Economic Dispatch and Uninstructed Deviation Penalties; (2) change the deadline for submitting Supplemental Energy bids; (3) exempt bids $0/MWh or less from the calculation to determine the reference price for resources; (4) extend the provisions of ISO Tariff Amendment No. 43 to pay pre-dispatched System Resources outside the ISO Control Area the instructed Imbalance Energy price in all intervals; (5) clarify that Automatic Mitigation Procedure reference prices will be calculated daily; and (6) limit the liability of the independent entity calculating such reference prices.

The ISO has served this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO has posted a copy of the filing on its Home Page.

Comment Date: October 11, 2002.

12. Minnesota Power

[Docket No. ER02–2578–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the Public Utilities Commission of Brainerd, Minnesota (Brainerd). This filing included revised rates, which would allow Brainerd the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Brainerd's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota).

Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

13. Minnesota Power

[Docket No. ER02–2579–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Two Harbors, Minnesota (Two Harbors). This filing included revised rates, which would allow Two Harbors the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to the retail customers of Two Harbors. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, and Randall; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

14. Minnesota Power

[Docket No. ER02–2580–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Nashwauk, Minnesota (Nashwauk). This filing included revised rates, which would allow Nashwauk the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Nashwauk's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

15. Minnesota Power

[Docket No. ER02–2581–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Hibbing, Minnesota—Public Utilities Commission (Hibbing). This filing included revised rates, which would allow Hibbing the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Hibbing's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Virginia—Department of Public Utilities (located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

16. Minnesota Power

[Docket No. ER02–2582–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Ely, Minnesota (Ely). This filing included revised rates, which would allow Ely the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Ely's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota).

Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

17. Minnesota Power

[Docket No. ER02–2583–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Proctor, Minnesota—Public Utilities Commission (Proctor). This filing included revised rates, which would allow Proctor the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Proctor's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; and the City of Grand Rapids—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

18. Minnesota Power

[Docket No. ER02–2584–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for Superior Water Light & Power Company, a wholly owned affiliate of Minnesota Power serving northwestern Wisconsin. Except for designations required by Order No. 614, the wholesale rate schedule terms and conditions remain unchanged from those previously on file with the Commission.

Comment Date: October 15, 2002.

19. Minnesota Power

[Docket No. ER02–2585–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Mountain Iron, Minnesota (Mountain Iron). This filing included revised rates, which would allow Mountain Iron the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Mountain Iron's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements

Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

20. Minnesota Power

[Docket No. ER02–2586–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Buhl, Minnesota (Buhl). This filing included revised rates, which would allow Buhl the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Buhl's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

21. Minnesota Power

[Docket No. ER02–2587–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for Dahlberg Light & Power Company. Except for designations required by Order No. 614, the wholesale rate schedule terms and conditions remain unchanged from those previously on file with the Commission.

Comment Date: October 15, 2002.

22. Minnesota Power

[Docket No. ER02–2588–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Keewatin, Minnesota (Keewatin). This filing included revised rates, which would allow Keewatin the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Keewatin's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

23. Minnesota Power

[Docket No. ER02–2589–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Virginia, Minnesota—Department of Public Utilities (Virginia, Minnesota). This filing included revised rates, which would allow Virginia, Minnesota the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Virginia, Minnesota's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission (located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

24. Minnesota Power

[Docket No. ER02–2590–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Pierz, Minnesota (Pierz). This filing included revised rates, which would allow Pierz the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to the retail customers of Pierz. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Randall and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota).

Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

25. Minnesota Power

[Docket No. ER02–2591–000]

Take notice that on September 23, 2002, Minnesota Power tendered for filing the complete wholesale rate schedule, designated as required by Commission Order No. 614, for the City of Randall, Minnesota (Randall). This filing included revised rates, which would allow Randall the option to purchase wholesale Renewable and/or High-Efficiency Energy from Minnesota Power, for resale to Randall's retail customers. Minnesota Power requests January 1, 2003 as the effective date for these revised rates.

In separate filings with the Commission, Minnesota Power also submitted complete, revised wholesale rate schedules, designated as required by Order No. 614, for the following categories of Minnesota Power wholesale customers: (a) Resale Service—Full Requirements Municipalities and Rural Utilities Customers (Full Requirements Customers): Cities of Aitkin, Biwabik, Buhl, Ely, Gilbert, Keewatin, Mountain Iron, Nashwauk, Pierz, and Two Harbors; the Public Utilities Commission of Brainerd; the City of Grand Rapids—Public Utilities Commission; and the City of Proctor—Public Utilities Commission (all located in the State of Minnesota); and (b) Resale Service—Partial Requirements Municipalities Customers (Partial Requirements Customers): City of Hibbing—Public Utilities Commission and City of Virginia—Department of Public Utilities (both located in the State of Minnesota). Minnesota Power's separate filings for each of its Full Requirements Customers and Partial Requirements Customers also included revised rates that would allow those Customers the option to purchase wholesale Renewable and/or High-Efficiency Energy for resale to their retail customers. Minnesota Power requested an effective date of January 1, 2003 for those revised rates.

Comment Date: October 15, 2002.

26. Southern California Edison Company

[Docket No. ER02–2592–000]

Take notice that on September 23, 2002, Southern California Edison Company (SCE) tendered for filing under SCE's Transmission Owner Tariff a System Facilities Agreement (Agreement) between SCE and Blythe Energy LLC (Blythe).

The Agreement specifies the terms and conditions pursuant to which SCE will design, engineer, construct and install the system facilities for Blythe to interconnect a 520 MW combined cycle power plant to the Western Area Power Administration (WAPA) transmission system at WAPA's Blythe Substation. SCE and WAPA's transmission systems are interconnected at WAPA's Blythe Substation.

SCE respectfully request the Agreement to become effective on September 24, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Blythe.

Comment Date: October 15, 2002.

27. Delmarva Power & Light Company

[Docket No. ER02–2593–000]

Take notice that on September 23, 2002, Delmarva Power & Light Company (Delmarva) tendered for filing a revised and executed Interconnection Agreement (Revised Interconnection Agreement) between Delmarva and the Delaware Municipal Electric Corporation (DEMEC). The Revised Interconnection Agreement continues to provide for the interconnection of DEMEC's generating units with the Delmarva transmission system and adds new tax provisions that were agreed to by the Parties.

Delmarva respectfully requests that the Commission allow the Interconnection Agreement to become effective on September 24, 2002, the day after filing. Copies of the filing were served upon the Delaware Public Service Commission, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment Date: October 15, 2002.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. 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. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–25398 Filed 10–4–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 2, 2002.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 9, 2002, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone, (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

807th—Meeting October 9, 2002; Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1,000, Agency Administrative Matters

A–2.
Docket# AD02–7,000, Customer Matters, Reliability, Security and Market Operations

A–3.
Docket# AD02–23,000, Demand Response Programs

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER02–2458,000, Midwest Independent Transmission System Operator, Inc.

E–2.
Docket# ER02–2463,000, ISO New England Inc.

E–3.
Docket# ER02–1494,000, Commonwealth Edison Company

E–4.
Omitted

E–5.
Docket# ER02–290,001, Midwest Independent Transmission System Operator, Inc.

E–6.
Docket# ER01–2207,001, Mid-Continent Area Power Pool
Other#s ER01–2207,002, Mid-Continent Area Power Pool
ER01–2207,004, Mid-Continent Area Power Pool
ER01–2207,005, Mid-Continent Area Power Pool

E–7.
Docket# ER01–702,003, American Transmission Company LLC
Other#s OA01–8,002, Wisconsin Electric Power Company

E–8.
Docket# TX96–2,006, City of College Station, Texas
Other#s TX96–2,000, City of College Station, Texas
TX96–2,001, City of College Station, Texas
TX96–2,002, City of College Station, Texas

E–9.
Docket# ER00–1743,004, Entergy Services, Inc.

E–10.
Docket# ER01–3000,006, International Transmission Company and DTE Energy Company
Other#s RT01–101,006, International Transmission Company and DTE Energy Company
EC01–146,006, International Transmission Company and DTE Energy Company

E–11.
Docket# ER02–1326,001, PJM Interconnection, L.L.C.
Other#s ER02–1326,002, PJM Interconnection, L.L.C.

E–12.
Omitted

E–13.
Omitted

E–14.
Docket# EC02–100,000, Mirant Neenah, LLC, Alliant Energy Resources, Inc., and Mirant Wisconsin Investments, Inc.

E–15.
Omitted

E–16.
Docket# ER00–1365,002, California Independent System Operator Corporation
Other#s ER00–1365,001, California Independent System Operator Corporation

E–17.
Docket# ER99–896,002, California Independent System Operator Corporation
Other#s ER99–896,001, California Independent System Operator Corporation

E–18.
Docket# EC00–118,002, Arizona Public Service Company, Pinnacle West Capital Corporation and Pinnacle West Energy Corporation

E–19.
Omitted

E–20.
Docket# ER02–405,002, Entergy Services, Inc.
Other#s EL02–107,000, Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, Duke Energy North America, LLC v. Entergy Services, Inc., Entergy Operating Companies
ER02–405,003, Entergy Services, Inc.

E–21.
Docket# ER00–1608,002, Southern Company Services, Inc.
Other#s ER01–2166,002, Southern Company Services, Inc.

E–22.
Omitted

E–23.
Omitted

E–24.
Omitted

E–25.
Omitted

E–26.
Docket# ER02–1663,001, Tampa Electric Company
Other#s ER02–1663,002, Tampa Electric Company

E–27.
Docket# ER97–2353,007, New York State Electric & Gas Corporation

E–28.
Omitted

E–29.
Docket# ER02–1913,001, Nevada Power Company

E–30.
Omitted

E–31.
Docket# ER02–2014,001, Entergy Services, Inc.

E–32.
Docket# EL02–101,000, Cleco Power LLC; Dalton Utilities (acting as agent for the City of Dalton, Georgia); Entergy Services, Inc. (acting as agent for Entergy Arkansas, Inc., Entergy Gulf States Inc., Entergy Louisiana, Inc., Entergy Mississippi Inc., and Entergy New Orleans, Inc.); Georgia Transmission Corporation; JEA (formerly Jacksonville Electric Authority); MEAG Power; Sam Rayburn G & T Electric Cooperative Inc.; South Carolina Public Service Authority; Southern Company Services, Inc. (acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company); and the City of Tallahassee, Florida.

E–33.
Docket# EL00–51,000, Northern Maine Independent System Administrator Inc.

E–34.
Omitted

E–35.
Docket# EL02–59,000, KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.

E–36.
Docket# EL01–76,000,001, State of Michigan and the Michigan Public Service Commission v. Wolverine Power Supply Cooperative, Inc.

E–37.
Docket# EL02–91,000, Williams Energy Marketing & Trading Company v. Southern Company Services, Inc.

E–38.
Docket# EL02–118,000, GenPower Anderson, LLC, FPL Energy Anderson, LLC, and Mountain Creek 2001 Trust v. Duke Energy Corporation and Duke Electric Transmission
Other#s ER02–2480,000, Duke Energy Corporation

E–39.
Docket# EL02–97,000, East Kentucky Power Cooperative, Inc. v. Louisville Gas and Electric Company and Kentucky Utilities Company

E–40.
Docket# EL02–121,000, Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company
E–41.
Docket# EL02–112,000, FirstEnergy Solutions Corp. v. PJM Interconnection, L.L.C.
Other#s EL02–120,000, Edison Mission Energy v. PJM Interconnection, L.L.C.
0E–42.
Omitted
E–43.
Docket# EL00–66,000, Louisiana Public Service Commission and the Council of the city of New Orleans v. Entergy Corporation
Other#s ER00–2854,000, Entergy Services, Inc.
EL95–33,002, Louisiana Public Service Commission v. Entergy Services, Inc.
E–44.
Docket# RT02–1,000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company
Other#s EL02–9,000, WestConnect RTO, LLC
E–45.
Docket# EL01–122,003, PJM Interconnection L.L.C.
Other#s EL01–122,002, PJM Interconnection L.L.C.
EL01–122,004, PJM Interconnection L.L.C.
E–46.
Docket# EL00–62,010, NSTAR Services Company v. New England Power Pool
Other#s EL00–62,046, NSTAR Services Company v. New England Power Pool
ER00–2052,008, NSTAR Services Company v. New England Power Pool
ER00–2052,011, NSTAR Services Company v. New England Power Pool
EL00–102,000, Northeast Utilities Service Company and Select Energy, Inc., v. ISO New England, Inc.
EL00–102,001, Northeast Utilities Service Company and Select Energy, Inc., v. ISO New England, Inc.
EL00–109,000, Alternate Power Source, Inc., v. ISO New England, Inc.
EL00–109,001, Alternate Power Source, Inc., v. ISO New England, Inc.
EL00–109,002, Alternate Power Source, Inc., v. ISO New England, Inc.
E–47.
Docket# ER99–3301,002, California Independent System Operator Corporation
E–48.
Docket# ER02–1420,001, Midwest Independent Transmission System Operator, Inc.
E–49.
Docket# EL02–103,000, City of Vernon, California
E–50.
Docket# ER02–700,000, Florida Power & Light Company
E–51.
Docket# RM00–7,002, Revision of Annual Charges Assessed to Public Utilities
Other#s RM00–7,003, Revision of Annual Charges Assessed to Public Utilities
RM00–7,004, Revision of Annual Charges Assessed to Public Utilities
RM00–7,005, Revision of Annual Charges Assessed to Public Utilities
RM00–7,006, Revision of Annual Charges Assessed to Public Utilities
E–52.
Docket# ER02–1656,001, California Independent System Operator Corporation
Other#s EL01–68,019, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
ER02–1656,002, California Independent System Operator orporation
ER02–1656,003, California Independent System Operator Corporation
ER02–1656,004, California Independent System Operator Corporation
ER02–1656,005, California Independent System Operator Corporation
ER02–1656,006, California Independent System Operator Corporation

Miscellaneous Agenda

M–1.
Docket# RM02–3,000, Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP00–490,000, Transwestern Pipeline Company
Other#s RP00–490,001, Transwestern Pipeline Company
RP00–626,000, Transwestern Pipeline Company
RP00–626,001, Transwestern Pipeline Company
RP00–626,002, Transwestern Pipeline Company
RP00–626,003, Transwestern Pipeline Company
G–2.
Docket# RP96–389,067, Columbia Gulf Transmission Company
G–3.
Docket# RP02–216,000, Reliant Energy Gas Transmission Company
Other#s RP02–216,001, Reliant Energy Gas Transmission Company
G–4.
Omitted
G–5.
Omitted
G–6.
Omitted
G–7.
Docket# TM99–6–29,003, Transcontinental Gas Pipe Line Corporation
Other#s TM99–6–29,004, Transcontinental Gas Pipe Line Corporation
RP00–209,000, Transcontinental Gas Pipe Line Corporation
RP01–253,000, Transcontinental Gas Pipe Line Corporation
RP02–171,000, Transcontinental Gas Pipe Line Corporation
G–8.
Omitted
G–9.
Docket# RP02–13,003, Portland Natural Gas Transmission System
G–10.
Docket# RP02–122,001, Kinder Morgan Interstate Gas Transmission, LLC
G–11.
Docket# RP99–274,006, Kern River Gas Transmission Company
Other#s RP99–274,007, Kern River Gas Transmission Company
G–12.
Docket# IS02–10,002 Kinder Morgan Operating L.P. ''A''
G–13.
Omitted
G–14.
Docket# RP00–462,001, Equitrans, L.P.
Other#s RP00–462,002, Equitrans, L.P.
RP01–37,003, Equitrans, L.P.
RP01–37,004, Equitrans, L.P.
G–15.
Docket# RP02–151,004, Gulf South Pipeline Company, LP
Other#s RP96–320,057, Gulf South Pipeline Company, LP
RP02–151,005, Gulf South Pipeline Company, LP
G–16.
Docket# RP02–330,001, ANR Pipeline Company
Other#s RP02–330,002, ANR Pipeline Company
G–17.
Omitted
G–18.
Omitted
G–19.
Docket# RP02–129,003, Southern LNG Inc.
Other#s RP02–129,000, Southern LNG Inc.
RP02–129,001, Southern LNG Inc.
RP02–129,002, Southern LNG Inc.
G–20.
Docket# RP00–260,010, Texas Gas Transmission Corporation
Other#s RP00–260,000, Texas Gas Transmission Corporation
G–21.
Docket# OR02–9,000, Chevron Products Company v. Calnev Pipe Line, L.L.C.
G–22.
Omitted
G–23.
Docket# IS01–444,005, Conoco Pipe Line Company
Other#s IS01–445,005, Conoco Pipe Line Company
G–24.
Docket# RP02–34,000, Eastern Shore Natural Gas Company
G–25.
Docket# RP02–334,003, Northern Natural Gas Company
Other#s RP02–334,002, Northern Natural Gas Company

Energy Projects—Hydro

H–1.
Docket# P–11162,004, Wisconsin Power and Light Company
H–2.
Docket# P–10893,008, Hy Power Energy Company
H–3.
Docket# P–2413,052, Georgia Power Company
H–4.
Docket# UL00–3,004, Homestake Mining Company

Other#s UL00–4,004, Homestake Mining Company
H–5.
Omitted
H–6.
Docket# P–10455,021, JDJ Energy Company
H–7.
Omitted
H–8.
Docket# P–2114,106, The Yakama Nation v. Public Utility District No. 2 of Grant County, WA

Energy Projects—Certificates

C–1.
Docket# CP02–229,000, SG Resources Mississippi, L.L.C.
Other#s CP02–230,000, SG Resources Mississippi, L.L.C.
CP02–231,000, SG Resources Mississippi, L.L.C.
C–2.
Omitted
C–3.
Docket# CP02–97,000, West Texas Gas, Inc.
C–4. Docket# CP02–17,001, Texas Eastern Transmission, L.P.
Other#s CP02–45,001, Texas Eastern Transmission, L.P.
C–5.
Docket# CP02–44,001, Dominion Transmission, Inc.
Other#s CP02–46,001, Tennessee Gas Pipeline Company
CP02–47,001, Dominion Transmission, Inc. and Tennessee Gas Pipeline Company
CP02–47,002, Dominion Transmission, Inc. and Tennessee Gas Pipeline Company
CP02–48,001, National Fuel Gas Supply Corporation and Tennessee Gas Pipeline Company
CP02–53,001, National Fuel Gas Supply Corporation and Dominion Transmission, Inc.
C–6.
Docket# CP02–32,001, Texas Eastern Transmission, LP
C–7.
Docket# CP01–422,002, Kern River Gas Transmission Company

Magalie R. Salas,
Secretary.

[FR Doc. 02–25644 Filed 10–4–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7391–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Part B Permit Application, Permit Modifications and Special Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Part B Permit Application, Permit Modifications and Special Permits, EPA ICR No.1573.06, OMB No. 2050–0009, expires on March 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 6, 2002.

ADDRESSES: Comments may be submitted by mail, through hand delivery/courier, or electronically. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

The mailing address, referencing Docket ID No. RCRA–1999–0050, is: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001. Hand deliveries of comments should be made to the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov.* Comments in electronic format should also be identified by the Docket ID No. RCRA–1999–0050. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001.

Hand deliveries must be brought to the Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. The telephone number for the Reading Room is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001, or by e-mail at eberly.david@epa.gov.

SUPPLEMENTARY INFORMATION:

How Can I Get copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–1999–0050. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (see **ADDRESSES** above). This Docket Facility is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. It is recommended that the public make an appointment by calling (202) 566–1742. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1 above.

For public commenters, it is important to note that EPA's policy is

that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–1999–0050. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–1999–0050. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES.** These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and two copies of their comments, referencing Docket ID No. RCRA–1999–0050, to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. RCRA–1999–0050. Such deliveries are only accepted during the Docket's normal hours of operation, from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays.

How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–001, Attention Docket ID No. RCRA–1999–0027. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information. In particular, for this ICR, EPA is soliciting information on the estimates for performing waste analyses as required in 40 CFR 264.13(a)(1) and 40 CFR 265.13(a)(1).

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who

are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Affected Entities: Entities potentially affected by this action are owners and operators of hazardous waste management facilities.

Title: Part B Permit Application, Permit Modifications and Special Permits, EPA ICR #1573.06, OMB No. 2050–0009, expires on March 31, 2003.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal (TSD) facilities to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under Sections 3004 and 3005.

This ICR provides a comprehensive discussion of the requirements for owner/operators of TSDFs submitting applications for a Part B permit or permit modification. The information collections contained in this ICR are divided into three sections: demonstrations and exemptions from requirements (40 CFR part 264), contents of the Part B application (40 CFR part 270), and permit modifications and special permits (40 CFR part 270).

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.

Burden Statement:

The estimated average burden for renewing the existing Part B ICR is as follows:

Demonstrations and Exemptions From Requirements

Releases from regulated Units—1.62 hours
Demonstrations and Exemptions from Requirements—9.67 hours

Contents of the Part B Application

Legal Review—100.00 hours
General Information—0.00 hours
Permit Application—2.93 hours
General Requirements—0.09 hours
General Facility Standards—356.25 hours
Financial Assurance—19.35 hours
Other Part B Requirements—12.00 hours
Ground Water Protection—166.94 hours
Solid Waste Management Units—10.81 hours
Specific Part B Information Requirements—1,143.70 hours
Schedules of Compliance—0.65 hours

Permit Modifications and Special Permits

Permit Modifications—47.35 hours
Expiration and Continuation of Permits—112.75 hours
Special Forms of Permits—59.54 hours

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: September 26, 2002.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 02–25420 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL 215–1; FRL–7391–9]

Notice of Final Determination for the Carlton LLC, North Shore Power Plant, City of Zion, Lake County, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that on February 28, 2001, the Environmental Appeals Board (EAB) of the EPA dismissed a petition for review of a permit issued for the Carlton, Inc. North Shore Power Plant (Carlton) by the Illinois Environmental Protection Agency (Illinois EPA) pursuant to the regulations under Illinois' minor New Source Review (NSR) program. The EAB dismissed the petition for lack of jurisdiction to review the permit.

DATES: The effective date for the EAB's decision is February 28, 2001. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of October 7, 2002.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Jorge Acevedo at (312) 886–2263.

FOR FURTHER INFORMATION CONTACT: Jorge Acevedo, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/disk11/carlton.pdf.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Action is EPA Taking?
B. What is the Background Information?
C. What did EPA Determine?

A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by Illinois EPA pursuant to Illinois' minor NSR program.

B. What Is the Background Information?

On November 10, 2000, Illinois EPA issued a construction permit 99120057 to Carlton for the construction of either three General Electric (GE) frame 7FA simple cycle turbines with a nominal capacity of 187 megawatts each, or six GE Frame 7EA simple cycle turbines with a nominal capacity of 98.2 megawatts each. The proposed turbines would fire only natural gas and would be required to use dry low oxides of nitrogen combusters. On December 11, 2000, Verena Owen and the Lake County Conservation Alliance (LCCA) filed a petition for review stating that the proposed facility was not a minor source, but in fact a major source of Carbon Monoxide, Nitrogen Oxides, Volatile Organic Materials, and Hazardous Air Pollutants and should be subject to the appropriate regulations. Illinois EPA filed a motion to dismiss the petition on January 5, 2001, in which it argued that the EAB lacked

jurisdiction to review Illinois EPA's permit decision because the permit issued to Carlton was issued under Illinois EPA's minor NSR program, rather than the Federal PSD program. On January 22, 2001, the EAB issued an order requesting EPA's Office of General Counsel (OGC) prepare an amicus brief on the issue of whether the EAB has jurisdiction over this matter. OGC subsequently filed an amicus brief advancing the view that the EAB is without jurisdiction in this case.

C. What Did the EAB Determine?

On February 28, 2001, the EAB denied the petition for review based on the grounds of lack of jurisdiction. The EAB stated that their jurisdiction is limited to permits issued under federal regulations and it does not extend to appeals of state-issued minor NSR permits in approved States.

Dated: September 24, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–25421 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7390–9]

Environmental Laboratory Advisory Board (ELAB) Meeting Date, and Agenda

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) will hold an Open Forum on Tuesday, November 19, 2002 at 5–6 p.m. MST and an Open Meeting on Thursday, November 21, 2002 at 9 a.m.–12 p.m. MST at the La Fonda Hotel, 100 E. San Francisco Street, Santa Fe, New Mexico. The ELAB meetings will be held in conjunction with the NELAC Eighth Interim Meeting occurring in the same location the week of November 17. Members of the public are invited to attend both ELAB events. Items to be discussed include: (1) An update on implementation of the National Environmental Laboratory Accreditation Conference (NELAC) restructuring, (2) discussion of future ELAB recommendations to EPA, and (3) the hearing of public comments and views on the environmental laboratory accreditation. ELAB is soliciting input from the public on these and other issues related to the National Environmental Laboratory Accreditation Program (NELAP) and the NELAC standards. Written comments on NELAP laboratory accreditation and the NELAC standards are encouraged and should be sent to Mr. Edward Kantor, DFO, U.S. EPA, P.O. Box 93478, Las Vegas NV 89193, or faxed to (702) 798–2261, or e-mailed to *kantor.edward@epa.gov*. or can be presented in person at the Open Forum, November 19, 2002. Members of the public are invited to raise issues or to make comments at the Open Forum, and time permitting, will be allowed to comment on discussions ensued from the ELAB Open Meeting.

Dated: September 30, 2002.

John G. Lyon,

Director, Environmental Sciences Division, National Environmental Research Laboratory.

[FR Doc. 02–25418 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7391–2]

Ross Metals, Inc., Superfund Site, Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the U.S. Environmental Protection Agency (EPA) has offered a de minimis settlement at the Ross Metals, Inc., Superfund Site (Site) located in Rossville, Tennessee, under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. Twenty-nine (29) parties have returned signature pages accepting EPA's settlement offer. For thirty (30) days following the publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency—Region 4, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Mr. Ray Strickland at the above address within 30 days of the date of publication.

Dated: September 26, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–25419 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7391–1]

Public Water System Supervision Program Revision for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State of Colorado has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Consumer Confidence Report Rule. Having determined that these revisions meet all pertinent requirements in the Safe Drinking Water Act, and EPA's implementing regulations, the EPA approves them.

Today's approval action does not extend to public water systems in Indian Country. Please see Supplementary Information, Item B.

DATES: Any member of the public is invited to submit written comments and/or request a public hearing on this determination by November 6, 2002. Please see Supplementary Information, Item C, for information on submitting comments and requesting a hearing. If no hearing is requested or granted, then this action shall become effective November 6, 2002. If a public hearing is requested and granted, then this determination shall not become effective until such time following the hearing as the Regional Administrator issues an order affirming or rescinding this action.

ADDRESSES: Written comments and requests for a public hearing should be addressed to: Robert E. Roberts, Regional Administrator, c/o Qian Zhang (8P–W–MS), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Municipal Systems Unit, 999 18th Street (4th Floor), Denver, CO 80202–2466; (2) Colorado Department of Public Health and Environment (CDPHE), Drinking Water

Section, 4300 Cherry Creek Drive South, Denver, CO.

FOR FURTHER INFORMATION CONTACT: Qian Zhang, Municipal Systems Unit, EPA, Region 8 (8P–W–MS), 999 18th Street, Suite 300, Denver, CO 80202–2466, 303–312–6267.

SUPPLEMENTARY INFORMATION: EPA approved Colorado's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR part 142 (see 48 FR 55173). CDPHE administers Colorado's PWSS program. The State of Colorado has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Consumer Confidence Report Rule that correspond to regulations for 40 CFR part 141, subpart O.

A. Why Are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the National Primary Drinking Water Regulations (NPDWRs) at 40 CFR part 141. (40 CFR 142.10(a)). Changes to state programs may be necessary as federal primacy requirements change, as states must adopt all new and revised NPDWRs in order to retain primacy. (40 CFR 142.12(a)).

B. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Colorado?

Colorado is not authorized to carry out its Public Water System Supervision program in Indian country. This includes, but is not limited to, lands within the exterior boundaries of the following Indian reservations located within the State of Colorado:

a. Southern Ute Indian Reservation;

b. Ute Mountain Ute Indian Reservation;

and any other lands which are Indian country as defined in 18 U.S.C. 1151.

C. Requesting a Hearing and Submitting Written Comments.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Colorado. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Colorado. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. A final determination will be made upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: September 26, 2002.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 02–25417 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7385–2]

Program Requirement Revisions related to the Public Water System Supervision Program for the States of Vermont, Connecticut, and New Hampshire, and the Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Vermont, Connecticut and New Hampshire, and the Commonwealth of Massachusetts, are in the process of revising their approved Public Water System Supervision Programs to meet the requirements of the Safe Drinking Water Act (SDWA).

EPA has determined that the Revised Public Water System Definition for the State of Vermont, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362), and the Public Notification Rule that corresponds to 40 CFR part 141, subpart Q, are no less stringent than the corresponding revised federal definitions. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for Vermont.

The State of Connecticut has adopted drinking water regulations establishing Administrative Penalty Authority that applies to its Drinking Water Program. The State submitted documentation, along with certification from its State Attorney General's office, indicating that the Administrative Penalty Authority currently in effect meets the minimum requirements set forth in the 1996 SDWA Amendments. EPA has determined that the Administrative Penalty Authority currently in effect in Connecticut is no less stringent than corresponding federal requirements, as authorized under the Safe Drinking Water Act Amendments of 1996 and final rule provided on April 28, 1998 (63 FR 23362). Therefore, EPA intends to approve the Administrative Penalty Authority requirements for Connecticut.

The Commonwealth of Massachusetts has revised its Public Water System Supervision (PWSS) primacy program by adopting regulations for the Public Notification Rule that correspond to 40 CFR part 141, subpart Q. After review of the submitted documentation, EPA has determined that Massachusetts' Public Notification Rule is no less stringent than the corresponding federal regulation. Therefore, EPA intends to approve this Public Water System Supervision Program requirement for Massachusetts.

The State of New Hampshire has adopted drinking water regulations for Synthetic Organic Chemicals and Inorganic Chemicals (also known as Phase II, Phase IIB, and Phase V Drinking Water Regulations) promulgated by EPA on January 30, 1991 (56 FR 3526), July 1, 1991 (56 FR 30266) and July 17, 1992 (57 FR 31776) respectively. After additional review of the submitted documentation, EPA has determined that the state program revisions for its Phase II, Phase IIB, and Phase V Drinking Water Regulations are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these Public Water System Supervision Program requirements for New Hampshire.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address

shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective 30 days after the publication of this **Federal Register** Notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State/Commonwealth:

Massachusetts Department of Environmental Protection, Drinking Water Program, One Winter Street, Boston, MA 02108.

Connecticut Department of Public Health, Drinking Water Division, 450 Capitol Avenue, P.O. Box 340308—51 WAT, Hartford, CT 06134–0308.

Vermont Department of Environmental Conservation, Water Supply Division, 103 South Main Street, Waterbury, VT 05671–0405.

New Hampshire Department of Environmental Services, Water Supply Engineering Bureau, P.O. Box 95, 6 Hazen Drive, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Barbara McGonagle, Office of Ecosystem Protection (telephone 617–918–1608).

Authority: Sections 1401 and 1413 (42 U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: September 26, 2002.

Robert W. Varney,

Regional Administrator, EPA—New England.

[FR Doc. 02–25426 Filed 10–4–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 02–276; FCC 02–248]

Commission Seeks Comment on Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on whether the Commission should take further action with regard to the pending applications for licenses won during Auction No. 35, which would consist of one of two scenarios described in the document. Under these scenarios, the Commission would refund certain amounts on deposit with the Commission for licenses subject to pending litigation or regulatory proceedings, and allow individual applicants to request voluntary dismissal of their license applications, with prejudice, for some or all of the licenses subject to pending litigation or regulatory proceedings.

DATES: Comments are due on or before October 11, 2002, and reply comments are due on or before October 21, 2002.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554 or hand carry comments to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Delacourt at (202) 418–0639.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 35 Pending License Applications* Public Notice released September 12, 2002. The complete text of the *Auction No. 35 Pending License Applications Public Notice,* including the statement, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The *Auction No. 35 Pending License Applications Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Background

1. On March 26, 2002, the Commission granted partial refunds of the down payments made by certain winning bidders in Auction No. 35 *Partial Refund Order,* 17 FCC Rcd 6283 (not published in the **Federal Register**). These winning bidders had made down payments and filed long-form applications for spectrum associated with licenses that had previously been issued to NextWave Personal Communications Inc., NextWave Power Partners Inc. (collectively ''NextWave'') and Urban Comm-North Carolina, Inc. (''Urban Comm''). This spectrum, as well as Auction No. 35, continues to be the subject of extensive litigation and pending regulatory proceedings. Key issues over the effectiveness of the Commission's automatic cancellation rules with respect to NextWave's licenses are scheduled for oral argument before the Supreme Court on October 8, 2002.

2. Pursuant to the *Partial Refund Order,* the Commission has already refunded approximately $2.8 billion to the Auction No. 35 winning bidders who have not yet received their licenses, but it retained an amount equal to three percent of the net winning bids for these licenses and maintained the pending status of the applications for these licenses. The total amount still on deposit with the Commission is $489,548,061. The total amount of these Auction No. 35 winners' obligations, including the refunded down payments, to the government for the former NextWave and Urban Comm licenses won at the auction is $16,318,268,700. The Commission has already received $504,419,150 in final payments for other licenses won and granted based on Auction No. 35.

3. As noted in the *Partial Refund Order,* the Commission was sympathetic to the needs of the auction winners, many of whom are small businesses, to have access to their funds to continue to operate their businesses. At the same time, the Commission held that it must protect the integrity of Auction No. 35 in the event the Commission is ultimately successful in its litigation. It therefore struck a balance between the hardship that would be imposed by continuing to retain the entirety of the down payments and the need to protect the integrity of the auction. Accordingly, it refunded to the payors of record a substantial portion of the monies on deposit.

4. However, the Commission's *Partial Refund Order* also found, *inter alia,* that the continued litigation associated with particular licenses *did not* relieve the winning bidders of the obligation to pay their full bid amounts for licenses won in Auction No. 35. In this regard, the Commission disposed of matters raised by Verizon in a letter to the Commission's Deputy General Counsel in which Verizon argued that it no longer had an obligation to pay the amount it bid in Auction No. 35 based on the theory that spectrum auctions create contractual relationships between the Commission and winning bidders, and that the Commission's failure to make timely delivery of the licenses rendered the contract void. No other Auction No. 35 applicant advanced this contract theory. In response to Verizon's letter, the *Partial Refund Order* stated that auctions are a regulatory mechanism for distributing licenses and that the relationship between the Commission and winning bidders of spectrum licenses is governed by the Communications Act, the Commission's competitive bidding regulations, and Public Notices setting forth specific conditions on particular auctions. Those conditions, the Commission stated, included the auction's contingency on the ''final'' outcome of the Next Wave litigation. Therefore, the Commission held that the fact that spectrum associated with the former NextWave licenses was not yet available for use by the Auction No. 35 winning bidders did not require the Commission to relieve Verizon of its bid obligations.

5. Verizon challenged the Commission's *Partial Refund Order* in two courts. In the D.C. Circuit, in case No. 02–1110, Verizon seeks a ruling that the delay in licensing caused by the NextWave litigation entitles Verizon to declare its auction obligations void. In the Court of Federal Claims, in case No. 02–280c, Verizon seeks a declaration nullifying Auction No. 35 as well as consequential damages. We stand by our legal conclusions in the *Partial Refund Order,* and do not through the *Auction No. 35 Pending License Applications Public Notice* suggest any support for Verizon's legal argument.

Discussion

6. Since the Commission issued its *Partial Refund Order* several months ago, the state of the capital markets for entities, including the applicants, engaged in the provision of wireless telecommunications services, as well as other telecommunications services, has continued to decline rapidly. Specifically, since March, the Commission has received submissions asserting that unique and troubling financial circumstances have led to difficulties in accessing capital and other problems for companies of all sizes, which in turn has affected the customers they serve. For instance, these commenters suggest that the impact of continuing contingent liabilities on credit ratings in the midst of a severe downturn in capital markets could potentially frustrate other policy objectives as well as quality of service. Moreover, as we have seen in the past, market downturns affect the value of spectrum licenses won at auction and licensees' (or applicants') ability to meet auction payment obligations. At the same time, the Commission remains concerned about protecting the integrity of its spectrum auction program. Concerns about the state of the capital markets must be balanced against this important public interest consideration.

7. Taking official notice of the status of the capital markets and other economic events, the Commission, on its own motion, seeks comment on these observations and whether it should take further action with regard to the pending applications for licenses won during Auction No. 35 for spectrum formerly licensed to NextWave and Urban Comm.

8. Specifically, the Commission seeks comment on whether it should consider further, *inter alia,* the following scenarios:

(i) *Full Refund and Option to Dismiss All Pending Applications.* Upon request, the Commission would refund to the payor of record the full amount of monies on deposit with the Commission for the licenses subject to the NextWave litigation and Urban Comm proceedings. The Commission would also provide a period of time for individual applicants to request voluntary dismissal of all of their applications, with prejudice.

Under this scenario, applicants obtaining a full refund and choosing to dismiss their applications would lose all claims to the affected Auction No. 35 licenses. Should the Commission prevail in the litigation, new initial licenses for the spectrum would be assigned by auction at a future date. In addition, the Commission would waive, in whole or part, its default rules for these licenses and, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards, forgive the debt incurred on them at Auction No. 35. The Commission seeks comment on whether it would be advisable to waive the default rules, or to extend debt forgiveness, in whole or in part, to a bidder opting for dismissal of its application(s). In addition, we seek comment on whether a bidder receiving a waiver or debt forgiveness should be barred from participating in the reauction of the licenses or otherwise obtaining such licenses for a period of time. Finally, the Commission seeks comment on whether applicants that would like to keep their applications pending should reaffirm their commitment to their Auction No. 35 obligations or just remain silent.

(ii) *Selective Opt-Out for Pending Applications.* The Commission would grant individual applicant requests for voluntary dismissal of their applications, with prejudice, for certain licenses and not others.

Under this scenario, the Commission would provide applicants the opportunity to pick and choose licenses for which to keep the applications pending and which to dismiss. The Commission seeks comment on whether all of the down payments should be refunded or only down payments associated with the dismissed licenses. As with the first scenario, applicants choosing to dismiss their applications would lose all claims to the affected licenses. Should the Commission prevail in the litigation, new initial licenses for the spectrum would be assigned by auction at a future date. In addition, the Commission would, in whole or part, waive its default rules for dismissed license applications and, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards, forgive the debt on them incurred at Auction No. 35. Again, the Commission seeks comment on whether a bidder opting for dismissal of its application(s) and receiving a full or partial waiver of the default payment rules should be barred from participating in the reauction of the licenses or otherwise obtaining such licenses for a period of time.

9. Although the oral argument in the Supreme Court case is fast approaching and the Commission has the utmost confidence in the merits of its case, the Commission and winning bidders in Auction No. 35 still face the possibility of prolonged litigation over such licenses during uncertain and trying economic conditions. The Commission also recognizes that should the Supreme Court rule in the government's favor, there may nevertheless be unresolved issues over the licenses, that would prolong the litigation. Depending on the length of the delay, capital market conditions may continue to change, increasing the possibility that winning bidders in Auction 35 will be in a significantly different position that at the time of the auction. Accordingly, the

Commission seeks comment on the scenarios discussed based on the changed circumstances since issuance of its *Partial Refund Order.* The Commission also seeks comment on whether granting relief under any of the options discussed herein would promote or disserve the public interest objectives outlined in section 309(j) of the Communications Act, including ''promoting economic opportunity and competition'' and ensuring ''efficient and intensive use of the electromagnetic spectrum.''

Procedural Matters

10. Pursuant to 47 CFR 1.1200(a), the Commission may adopt modified ex parte procedures in particular proceedings if the public interest so requires. Accordingly, issues related to the *Auction No. 35 Pending License Applications Public Notice* will be governed by ''permit-but-disclose'' *ex parte* procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. Designating this matter as ''permit but disclose'' will provide an opportunity for all interested parties to comment on the policy questions concerning the treatment of the funds on deposit. All other matters concerning Auction No. 35 applications that are the subject of NextWave's Petition to Defer and other petitions to deny remain restricted, pending further action by Public Notice.

11. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before October 11, 2002, and reply comments on or before October 21, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

12. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Marlene H. Dortch, Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–25348 Filed 10–4–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act; Meeting Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Wednesday, October 9, 2002.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTER TO BE CONSIDERED:

- Amendment to the Federal Home Loan Bank of Seattle Capital Plan.
- Amendment to the Federal Home Loan Bank of Indianapolis Capital Plan.
- Federal Home Loan Bank of Dallas Request for an additional Elective Director from the State of Texas.
- Public Interest Director—Board of Directors Office of Finance (Tentative).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Elaine L. Baker,

Secretary to the Board.

[FR Doc. 02–25498 Filed 10–2–02; 4:33 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 21, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Jasper Banking Company ESOP, and James H. Bryan, Trustee, both of Jasper, Georgia; to acquire additional voting shares of JBC Bancshares, Inc., Jasper, Georgia, and thereby indirectly acquire additional voting shares of Jasper Banking Company, Jasper, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Male Family Investments II, L.P., Augusta, Kansas; to acquire control of Prairie Capital, Inc., Augusta, Kansas, and thereby indirectly acquire voting shares of Prairie State Bank, Augusta, Kansas.

Board of Governors of the Federal Reserve System, October 1, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25366 Filed 10–4–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. BNC Bancorp, Thomasville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of North Carolina, Thomasville, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. The Templar Fund, Inc., St. Louis, Missouri; to acquire between 36.77 and 40.8 percent of the voting shares of Truman Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire Truman Bank, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, October 1, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–25365 Filed 10–4–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Automotive Fuel Ratings, Certification and Posting Rule (''Fuel Rating Rule'' or ''Rule''). The FTC is seeking public comments on the proposal to extend through December 31, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on December 31, 2002.

DATES: Comments must be filed by November 6, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov*), and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to: *FuelRating PRA@ftc.gov*) as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On July 24, 2002, the FTC sought comment on the information collection requirements associated with the Fuel Rating Rule, 16 CFR part 306 (OMB Control Number: 3084–0068). *See* 67 FR 48471. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be field in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *Fuel Rating PRA@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CCR 4.9(b)(6)(ii).

The Fuel Rating Rule establishes standard procedures for determining, certifying, and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels, as required by the Petroleum Marketing Practices Act. 15 U.S.C. 2822(a)–(c). The Rule also requires refiners, producers, importers, distributors, and retailers to retain records showing how the ratings were determined, including delivery tickets or letters of certification.

Estimated annual hours burden: 42,000 total burden hours (17,000 recordkeeping hours + 25,000 disclosure hours).

Recordkeeping: Based on industry sources, staff estimates that 200,000 fuel industry members each incur an average annual burden of approximately five minutes to ensure retention of relevant business records for the period required by the Rule, resulting in a total of 17,000 hours, rounded.

Disclosure: Staff estimates that affected industry members incur an average burden of approximately one hour to produce, distribute, and post octane rating labels. Because the labels are durable, only about one of every eight industry members (*i.e.*, approximately 25,000 of 200,000 members) incur this burden each year, resulting in a total annual burden of 25,000 hours.

Estimated annual cost burden: $739,000, rounded ($672,000 in labor costs and $67,000 in non-labor costs).

Labor costs: Staff estimates that the work associated with the Rule's recordkeeping and disclosure requirements is performed by skilled clerical employees at an average rate of $16.00 per hour. Thus, the annual labor cost to respondents of complying with the recordkeeping and disclosure requirements of the Rule is estimated to be $672,000 ((17,000 hours + 25,000 hours) × 16.00 per hours).

Capital or other non-labor costs: $67,000, rounded up to the nearest thousand. Staff believes that there are no current start-up costs associated with the Rule. Because the Rule has been effective since 1979 for gasoline, and since 1993 for liquid alternative automotive fuels, industry members already have in place the capital equipment and other means necessary to comply with the Rule. Retailers

(approximately 175,000 industry members), however, do incur the cost of procuring (and replacing) fuel dispenser labels to comply with the Rule. According to industry input, the price per label is about thirty-eight cents. Based on ranging industry estimates of a 6–10 year useful life per dispenser label, staff will conservatively factor into its calculation of labeling cost the shortest assumed useful life, *i.e.*, 6 years. Staff believes that the average retailers has six dispensers, with all of them being obtained either simultaneously or otherwise within the same year. Assuming that, in any given year, ⅙ of all retailers (29,167 retailers) will replace their dispenser labels, staff estimates total labeling cost to be $66,500 (29,167 × 6 × .38).

John D. Graubert

Acting General Counsel.

[FR Doc. 02–25443 Filed 10–4–02; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Final OGE Information Quality Guidelines

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics announces that the Office of Management and Budget (OMB) has completed its review of OGE's Information Quality Guidelines. The Office of Government Ethics' final Information Quality Guidelines are now posted on the OGE Web site.

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; OGE Internet e-mail: *usoge@oge.gov* (for e-mail messages the subject line should include the following reference—''Final OGE Information Quality Guidelines''); telephone: (202) 208–8000, ext. 1185; TDD 202–208–8025; FAX: 202-208–8037. A copy of the final guidelines may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury & General Government Appropriations Act for FY 2001 (Public Law No. 106–554 requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates to the public. Agency guidelines must be based on Governmentwide guidelines issued by OMB. In compliance with this statutory requirement, OMB has completed its final review of OGE's Information Quality Guidelines and OGE has posted its final guidelines on the OGE Internet Web site (*http://www.usoge.gov*). The guidelines, effective October 1, 2002, describe OGE's procedures for ensuring the quality of information that it disseminates to the public and the procedures by which an affected person could obtain correction of information disseminated by OGE that did not comply with the guidelines.

On July 31, 2002, OGE published a notice of the posting of its draft information quality guidelines on OGE's Web site and requested public comment. *See* 67 FR 49694–49695. The Office of Government Ethics received one letter of general comments. In response to that letter and OMB's final review of the draft guidelines, OGE added language to clarify the effective date of the guidelines once finalized. Furthermore, in response to OMB's final review, OGE inserted language addressing OGE's current comprehensive public comment process, including the separate procedures for commenting on documents published in the **Federal Register**.

Persons who cannot access the guidelines through the Internet may request a paper or electronic copy by contacting Ms. Donovan at the address, phone number, e-mail address, or FAX number listed above.

Approved: October 1, 2002.

Daniel D. Dunning,

Deputy Director for Administration and Information Management, Office of Government Ethics.

[FR Doc. 02–25461 Filed 10–4–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

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: Incidence of Received Research Misconduct in Biomedical Research—NEW—As required by Section 493 of the Public Health Service Act, the Secretary by regulation shall require that applicant and institution receiving PHS funds must investigate and report instances of alleged or apparent misconduct in science. The purpose of this study is to produce a reliable estimate of the incidence of search misconduct and initiate a longitudinal database for measuring changes and evaluating federal and institutional efforts to prevent research misconduct and promote research integrity. *Respondents:* Not-for-profit Institutions—*Number of Respondents:* 3,000; *Burden per Response:* 20 minutes; *Total Burden:* 1,000 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Huber H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Comments should be received within 60 days of this notice.

Dated: September 12, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–25403 Filed 10–4–02; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities; Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of

Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Office at (202) 619–2118 or e-mail *Geerie.Jones@HHS.gov.*

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: 1. Survey of SCHIP Administrators for the Congressionally Mandated Evaluation of the State Children's Health Insurance Program—NEW—The Department's Office of the Assistant Secretary for Planning and Evaluation proposes to conduct a survey of state administrators of the State Children's Health Insurance Program (SCHIP). As mandated by the Balanced Budget Refinement Act (BBRA) of 1999 this study is to obtain information about the broader context in which state programs operate, including the political and social context, policy discussions, lessons learned, and key issues facing the program in the next one or two years. *Respondents:* State and local governments—*Number of Respondents:* 56; *Estimated Burden per Response:* 1.12 hours; *Total Burden:* 63 hours.

Send comments via e-mail to *Geerie.Jones@HHS.gov* or mail to OS Reports Clearance Office, Room 503H, Huber H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201. Comments should be received within 60 days of this notice.

Dated: September 23, 2002.

Kerry Weems,

Deputy Assistant Secretary, Budget.

[FR Doc. 02–25404 Filed 10–4–02; 8:45 am]

BILLING CODE 4154–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2002–17]

Grant to the Community Nutrition Institute

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Community Nutrition Institute to support a nationwide initiative for the Community Food and Nutrition Program (CFNP). The nationwide initiative is a national research project to study the impact of current CFNP projects on low-income communities, families, and children nationwide. The results of the study will enable OCS to improve the quality of service provided to the network of CFNP grantees, and to assess the program's impact on improving the health and nutritional well-being of low-income families, children and individuals nationwide.

The CFNP legislation requires that the Department fund a Nationwide Program for Fiscal Year 2002. Pub. L. 97–35 as amended by Pub. L. 105–285 at section 681(b)(2)(C) states that "* * * The Secretary shall * * * make grants * * * on a competitive bases * * * for nationwide programs. * * *" Since the Department did not receive any applications in response to our CFNP Nationwide Program Announcement, this project is being funded noncompetitively. It is expected to provide valuable information useful to this Department and other practitioners regarding research and demonstration initiatives related to welfare reform and the well-being of low-income children and families. This is a three-year project. The cost of the project is $300,000 for the first year.

FOR FURTHER INFORMATION CONTACT: Catherine Rivers, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–401–5252.

Dated: September 18, 2002.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 02–25394 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to the Hebrew Immigrant Aid Society

AGENCY: Office of Refugee Resettlement (ORR), HHS.

ACTION: Grant Award Announcement.

SUMMARY: Notice is hereby given that an award is being made to the Hebrew Immigrant Aid Society of New York, in the amount of $850,000 to further the integration and self-sufficiency of recently arrived refugees by implementing programs to strengthen refugee families and marriages and to promote responsible fatherhood. The funds provided will be utilized to develop programs in 10 pilot sites. The period of this funding will extend through September 29, 2004.

After an appropriate review, it has been determined that the need for the cited services by this population is imperative and the applicant has over two hundred years of experience in resettling such refugees. The proposed activities—family strengthening programs for struggling refugee families—strongly support the Administration's defined goals. These programs reflect current social science research in family relationships and have a strong track record in successful outcomes in mainstream populations. Their extension to refugee populations will be a welcome addition to ORR's social services emphasis. No other grant program currently includes these programs.

FOR FURTHER INFORMATION CONTACT: Loren Bussert, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4732.

Dated: September 27, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–25395 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of

Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 67 FR 42268–42271, dated July 21, 2002) is amended to reorganize the Office of the Director, NCHS.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *National Center for Health Statistics (CS)* and insert the following:

(1) Provides national leadership in health statistics and epidemiology; (2) collects, analyzes, and disseminates national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system: health costs and expenditures, changes in the health status of people, and environmental, social, and other health hazards; (3) administers the Cooperative Health Statistics System; (4) stimulates and conducts basic and applied research in health data systems and statistical methodology; (5) coordinates to the maximum extent feasible, the overall health statistical and epidemiological activities of the program and agencies of the Department of Health and Human Services (DHHS) and provides technical assistance in the planning, management, and evaluation of the Department's statistical programs; (6) maintains operational liaison with statistical units of other health agencies, public and private, and provides technical assistance within the limitations of staff resources; (7) fosters research, consultation, and training programs in international statistical activities; (8) participates in the development of national health statistics policy with other Federal agencies; (9) directs the environmental and epidemiological statistics programs of the National Center for Health Statistics (NCHS); and (10) provides the Secretary, DHHS with consultation and advice on statistical matters in its role as the Government's principal general-purpose health statistics organization as designated by the Office of Management and Budget (OMB).

Delete the functional statement for the *Office of the Director (CS1)* and insert the following:

(1) Plans, directs, administers, coordinates and evaluates the total vital, health, and health-related statistics programs of the Center; (2) stimulates basic and applied research and development activities; (3) provides national and international leadership in vital and health statistics and epidemiology; (4) conducts a variety of professional activities to provide assistance to government agencies, to foster international relationships, and to improve the broad fields of vital and health statistics and epidemiology; (5) coordinates the Center's activities with public and private health statistical agencies; (6) provides advice and guidance on disease classification problems in the Center, coordinates activities within the Center on classification of diseases and procedures; and has responsibility for development of revision proposals and U.S. position on decennial revisions of the International Classification of Diseases (ICD); (7) directs the Center's environmental and epidemiological statistics programs; (8) provides management and administration for the Center; (9) provides program planning and development for the Center; (10) develops and coordinates legislative activities; and (11) directs and coordinates Center activities in support of the Department's Equal Employment Opportunity program.

Delete in its entirety the functional statement for the *Office of International Statistics (CS15)* and the *Office of Data Standards, Program Development, and Extramural Programs (CS16).*

After the *Office of Planning, Budget and Legislation (CS17),* insert the following:

Classifications and Public Health Data Standards Staff (CS18). (1) Serves as a nucleus for Public Health data standards and health classifications by fostering the collaborative development of tools and guidelines to enhance the integrity, comparability, quality, and usefulness of the data products from a wide variety of public and private agencies at the national and sub-national levels; (2) establishes and maintains liaison and partnerships with Federal agencies within and outside DHHS and with a wide variety of private and professional organizations to promote uniformity in classifications, data sets, definitions, and related data policies and standards; (3) assures representation of NCHS and takes a leadership role on intra- and interagency task forces and committees reviewing and developing uniform data elements and data sets for diverse health care settings, nomenclatures and classifications; (4) serves as a focal point within NCHS for collaborative activities related to computer-based patient record development; (5) supports the Director, NCHS, as a member of the DHHS Data Council and coordinates NCHS staff support to the Data Council for Public Health data standards activities; (6) provides scientific and technical support and Executive Secretariat services to the National Committee on Vital and Health Statistics (NCVHS), the legislatively-mandated advisory committee to the Secretary, DHHS; (7) establishes and maintains liaison between NCVHS and agencies within DHHS, other governmental agencies, and relevant private and professional organizations; (8) directs and facilitates cross-cutting Public Health data standards activities that involve multiple outside organizations and have important implications for NCHS and CDC programs; (9) provides liaison with standards-setting organizations on emerging data needs and on medical and health classification issues; (10) is responsible for overseeing, coordinating, evaluating, and formulating recommendations for the ICD Family of Classifications and related classifications, by providing the focus within NCHS for the development and execution of classification activities; (11) serves as the focal point and coordinator of U.S. Government activities related to the ICD and maintains liaison with the World Health Organization (WHO), through direction of the WHO Collaborating Center for the Classification of Diseases of North America; (12) provides advice and assistance within NCHS and to other agencies and organizations in the conduct of training activities related to Public Health data standards; conducts training in key areas as appropriate; and promotes appropriate training and educational materials for implementation and use of data sets and classification systems; (13) is responsible for assuring comparability of morbidity classification, using current and subsequent versions of the ICD for morbidity, and recommends revisions to the ICD for morbidity applications as appropriate; (14) assumes full responsibility for the development and implementation of the evaluation program of NCHS for assessment of the adequacy, completeness, and responsiveness of Center programs both nationally and internationally to the NCHS mission and user needs for data; based on evaluations, makes proposals for changes in NCHS programs or policies; (15) participates with appropriate agencies and organizations to promote the dissemination, adoption, and use of Public Health data standards advocated by NCHS, DHHS, and the NCVHS; to

this end, develops comprehensive policy analyses and special reports, and newsletters; and (16) directs the work of the Public Health Data Standards Consortium.

Dated: September 20, 2002.

William Gimson,

Acting Director.

[FR Doc. 02–25455 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Final Selection Criteria and Solicitation of Nominations for Chemicals or Categories of Environmental Chemicals for Analytic Development and Inclusion in Future Releases of the National Report on Human Exposure to Environmental Chemicals

AGENCY: Centers for Disease Control and Prevention (CDC), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On Wednesday, March 20, 2002, CDC sought public comment on its proposed criteria for selecting environmental chemicals or categories of chemicals for inclusion in future releases of the *National Report on Human Exposure to Environmental Chemicals* (the ''Report''). (See **Federal Register**, Vol. 67, No. 54, p. 12996). In response to the comments received, CDC now provides the final selection criteria and solicits public nominations for categories of chemicals to be included in future issues of the ''Report.'' The selection criteria, which will be used by experts to prioritize the nominated chemicals for analytic development and for inclusion in future issues of the ''Report,'' are as follows: (1) Independent scientific data which suggest that the potential for exposure of the U.S. population to a particular chemical is changing (*i.e.*, increasing or decreasing) or persisting; (2) seriousness of health effects known or suspected to result from exposure to the chemical (for example, cancer, birth defects, or other serious health effects); (3) proportion of the U.S. population likely to be exposed to levels of chemicals of known or potential health significance; (4) need to assess the efficacy of public health actions to reduce exposure to a chemical in the U.S. population or a large component of the U.S. population (for example, among children, women of childbearing age, the elderly); (5) existence of an analytical method that can measure the chemical or its metabolite in blood or urine with adequate accuracy, precision, sensitivity, specificity, and speed; and (6) incremental analytical cost (in dollars and personnel) to perform the analyses (preference is given to chemicals that can be added readily to existing analytical methods).

CDC welcomes all nominations: those persons who wish to nominate a chemical or chemical category (for example, pesticides, fumigants) should use the structural name (for example, 2,3,7,8-tetrachlorodibenzo-p-dioxin). Do not submit chemicals by their product names because chemical products are most commonly mixtures of chemicals. Nominators should indicate which of the selection criteria the chemical or categories of chemicals satisfy and should provide as much information as possible about the chemical or chemical category, including references and Chemical Abstracts Service (CAS) numbers. A CAS number is a unique number assigned to a given compound by the Chemical Abstracts Service, a division of the American Chemical Society. This number is also known as the CAS registry number (CAS RN). You may verify spellings of chemical names and CAS numbers by referring to *Hawley's Condensed Chemical Dictionary* (published by John Wiley and Sons; ISBN: 0471387355) or by searching Web sites such as the following: *http://www.chemfinder.com, http://www.chemindustry.com/chemicals/index.asp, http://webbool.nist.gov/chemistry/name-ser.html,* or *http://db.chemsources.com/chemsources/chemfind.htm.* The more information nominators provide, the more efficiently the nominated chemical will move through the selection process.

For each criterion, a panel of experts will score nominated chemicals on a scale of 1 to 5, with a higher score indicating higher priority. For each criterion, the score will be multiplied by the weighting factor for the criterion (criteria 1–3 each have weights of 25, criteria 4 and 5 have weights of 10 each, and criterion 6 has a weight of 5) and the weighted score summed to obtain a final point score for each chemical or chemical category. The maximum final point score is 500, which would result from a scoring of 5 for each of the six criteria. On the basis of its final point score, a chemical will be placed in one of five priority groups (*e.g.*, priority group 1, priority group 2, and so on). CDC will report each chemical or chemical category evaluated along with the priority group to which it was assigned. This information will appear in the **Federal Register** and on CDC's Web site at this address: *http://www.cdc.gov/nceh/dls/report/selectedchemicals.* CDC's intent is to maintain a transparent process and to be good steward of the data it produces.

To that end, CDC will publish additional notices in the **Federal Register** as needed to keep the public abreast of progress on the nomination of chemicals for future issues of the ''Report.''

DATES: Submit nominations on or before December 6, 2002.

ADDRESSES: Address all nominations related to this notice to Dorothy Sussman, Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Laboratory Sciences, Mail Stop F–20, 4770 Buford Highway, Atlanta, Georgia 30341. Nominations may also be made via e-mail to this address: *ncehdls@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Technical Information: Dr. Richard Wang, Telephone 770–488–7950.

SUPPLEMENTARY INFORMATION: CDC publishes the ''Report'' under the authorities 42 U.S.C. 241 and 42 U.S.C. 242k. The ''Report'' provides an ongoing assessment using biomonitoring of the exposure of the noninstitutionalized, civilian population to environmental chemicals. Biomonitoring assesses human exposure to chemicals by measuring the chemicals or their breakdown products in human specimens such as blood or urine. For the ''Report,'' an environmental chemical means a chemical compound or chemical element present in air, water, soil, dust, food, or other environmental medium. The ''Report'' provides exposure information about participants in an ongoing national survey known as the National Health and Nutrition Examination Survey (NHANES). This survey is conducted by CDC's National Center for Health Statistics; measurements are conducted by CDC's National Center for Environmental Health. The first ''Report,'' published in March 2001, gave information about levels of 27 chemicals found in the U.S. population. This ''Report'' can be obtained in the following ways: access *http://www.cdc.gov/nceh/dls/report/;* e-mail *ncehdls@cdc.gov;* or telephone 1–866–670–6052. The second ''Report,'' which will be issued in late fall of 2002, will include information about at least 75 chemicals. In addition to new data on those chemicals that appeared in the first ''Report,'' information on the following categories of chemicals will be in the second ''Report': polycyclic

aromatic hydrocarbons (PAHs), co-planar and non-coplanar polychlorinated biphenyls (PCBs), persistent organochlorine pesticides, carbamate pesticides, dioxins and furans, and phytoestrogens.

Future editions of the ''Report'' will provide detailed assessments of exposure levels among different population groups defined by sex, race or ethnicity, age, urban or rural residence, educational level, income, and other characteristics. Over time, CDC will be able to track trends in exposure levels. Future editions may also include additional exposure information for special-exposure populations (*e.g.*, children, women of childbearing age, the elderly) from studies of people through localized or point sources, and from studies of adverse health effects resulting from exposure to varying levels of environmental chemicals.

Dated: September 30, 2002.

Verla S. Neslund,

Director, Executive Secretariat, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–25374 Filed 10–4–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4050–NR]

Medicare Program; Changes in Medicare Appeals Procedures Based on Section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

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

ACTION: Notice of CMS ruling.

SUMMARY: This notice announces a CMS Ruling that sets forth our policy regarding implementation of the new appeals provisions in section 1869 of the Social Security Act, as amended by section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Public Law 106–554. The Ruling identifies changes that will take effect on October 1, 2002 and provides notice of the administrative procedures that CMS contractors, administrative law judges, and the Departmental Appeals Board are to follow in processing Medicare claims appeals.

FOR FURTHER INFORMATION CONTACT: Michele Edmondson (410) 786–6478.

SUPPLEMENTARY INFORMATION: The CMS Administrator signed Ruling CMSR–02–01 on September 12, 2002. The text of the CMS Ruling is as follows:

Changes in Medicare Appeals Procedures Under Section 521 of BIPA

Summary: Section 521 of BIPA states that ''the amendments made by [section 521] shall apply with respect to initial determinations made on or after October 1, 2002.'' BIPA § 521(d), Pub. L. 106–554 (2000). The statute includes a series of structural and procedural changes to the existing appeals process, including revised time limits for filing appeals, reduced decision-making time frames throughout all levels of the Medicare administrative appeals system, and the establishment of new entities known as qualified independent contractors (QICs) to conduct reconsiderations of contractors' initial determinations or redeterminations. However, CMS is unable to immediately implement many of these far-reaching changes. The primary purpose of this Ruling is to explain CMS' progress to date in implementing section 521 of BIPA and identify those provisions that will be implemented effective October 1, 2002. Additionally, the Ruling will clarify our policies with respect to the provisions that cannot be implemented by October 1, 2002, and provides notice of the administrative procedures that CMS contractors, administrative law judges (ALJs) and the Departmental Appeals Board (DAB) will follow in processing Medicare claim appeals until we are able to fully implement section 521 of BIPA.

Citations: Sections 1154, 1869 and 1879 of the Social Security Act and section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554.

I. Background

Section 1869 of the Act establishes a Medicare beneficiary's right to dispute initial determinations made by contractors that result in the denial of claims, in whole or in part, for services received under the Medicare Part A and Part B Programs. Section 1879(d) extends these appeal rights, under certain circumstances, to providers and suppliers who accept assignment.

For initial determinations made before October 1, 2002, an appeal of an initial claim decision generally follows one of two distinct processes, depending on whether it is a Part A or a Part B claim. For Part A claims, ''reconsiderations'' under section 1816(f)(2)(A) of the Act are carried out by Medicare contractors, known as fiscal intermediaries (FIs), who issue the initial determination. If an initial determination is upheld at the reconsideration level, the appellant may request a hearing before an ALJ, if the amount in controversy is $100 or more. If the ALJ upholds the FI's reconsideration decision, the appellant may request a review by the DAB. An appellant's next level of appeal is to a Federal District Court. For Part B claims, reviews under section 1842(b)(2)(B)(i) of the Act are carried out by Medicare contractors known as carriers. If the amount in controversy is at least $100, carrier reviews are subject to ''fair hearings'' under section 1841(b)(2)(B)(ii) of the Social Security Act, which are carried out by the same Medicare contractor that conducted the review. Subsequently, these appeals may proceed to the ALJ hearing level, provided that the amount in controversy is $500, after which the appeals process for Part B claims mirrors the Part A appeals process. In addition, Quality Improvement Organizations (QIOs—formerly Peer Review Organizations) make initial determinations and reconsiderations with respect to certain hospital discharges under sections 1154 and 1155 of the Act. These decisions are also subject to ALJ hearings, if the amount in controversy is at least $200.

Section 521 of BIPA amends section 1869 of the Act to revise the Medicare administrative appeals process. Section 521's structural and procedural changes include:

- Establishing a uniform process for handling Medicare Part A and B appeals, including the introduction of a new level of contractor appeal.
- Revising the time frames for filing a request for a Part A and Part B appeal.
- Imposing a 30-day timeframe for certain ''redeterminations'' made by the contractors who made the initial determination.
- Requiring the establishment of a new appeals entity, the qualified independent contractor (QIC), to conduct ''reconsiderations'' of contractors' initial determinations or redeterminations, and allowing appellants to escalate the case to an ALJ hearing, if reconsiderations are not completed within 30 days.
- Establishing a uniform amount in controversy threshold of $100 for appeals at the ALJ level.
- Imposing 90-day time limits for conducting ALJ and DAB appeals of lower-level decisions and allowing appellants to escalate a case to the next level of appeal if ALJs or the DAB do not meet their deadlines.

• Imposing ''de novo'' review when the DAB reviews an ALJ decision made after a hearing.

Revised section 1869 also requires that the Secretary establish a process by which an individual may obtain an expedited determination if he/she receives a notice from a provider of services that the provider plans to terminate services or discharge the individual from the provider. Currently, this right to an expedited review only exists with respect to hospital discharges (under sections 1154 and 1155 of the Act).

As discussed in detail below, CMS is unable to immediately implement some of these provisions for initial determinations made on or after October 1, 2002. The primary purpose of this Ruling is to discuss the progress we have made to date in implementing the various section 521 provisions, describe the criteria used to evaluate our ability to implement the provisions at this time, and explain which requirements will be implemented effective October 1, 2002. Additionally, it clarifies our policies with respect to the provisions that cannot be implemented by October 1, 2002, and provides notice of the administrative procedures that CMS contractors, ALJs and the Medicare Appeals Council (MAC) at the DAB will follow in processing Medicare claims appeals until we are able to fully implement the procedures set forth in section 521 of BIPA.

II. Implementation of the New Appeals Requirements

CMS is fully committed to improving the administrative appeals process by implementing section 521 of BIPA and we have made significant progress toward full implementation of BIPA section 521. Consistent with the statute, we recently issued a Program Memorandum to our carriers and intermediaries instructing them to implement the revised filing deadlines for requesting an appeal of a reconsideration or review and the lower amount in controversy requirement for Part B ALJ hearings. We have completed development of the Requests for Proposals needed to solicit bids for the QIC contracts, including full statements of work (SOWs) for these contracts. We are releasing the draft SOWs for industry comment simultaneously with issuing this CMS ruling. We are also completing development of the notice of proposed rulemaking (NPRM) needed to establish implementing regulations for the provisions contained in section 521 of BIPA, and we expect to release the NPRM this fall for public display and comment. Additionally, CMS is near completion of the first phase of a contract to develop a central appeals case tracking system, and is working on revising the various appeals forms. Finally, we have taken steps within the agency to ensure that our denial messages from the initial determination phase through to reconsideration, review and fair hearing levels are more informative to potential appellants.

Despite these efforts, however we believe it is in the public interest to implement only some of section 521's provisions beginning October 1, 2002. The primary reason is that the new appeals provisions require additional policy development that can be best accomplished through notice and comment rulemaking. Only with the issuance of final regulations can we achieve the uniformity and consistency needed for proper implementation of the BIPA 521 provisions. (See, for example, the Inspector General's January 2002 report: ''Medicare Administrative Appeals—The Potential Impact of BIPA'', OEI–04–01–00290, in which CMS'' auditors, the OIG, concur that immediate implementation of section 521 presents significant challenges due to large-scale structural changes and the lack of guidance or resources to ensure a smooth transition to the new system.) Among the key issues that have been identified by CMS and other observers as requiring additional policy guidance prior to implementation are:

• How CMS can balance its responsibilities to reduce Medicare fraud and abuse with the need to comply with the shorter BIPA time frames and escalation provisions.

• The proper amount-in-controversy threshold for QIC reconsiderations.

• The rules that should apply during the transition period to the new appeals system and whether it is possible or prudent to operate dual appeals systems depending on the date of an initial claim determination.

• Whether the existing availability of phone and in-person ''fair hearings'' can be accommodated under the new QIC reconsideration process.

• Whether and how CMS should be represented at the upper levels of the appeal process.

• How will case docketing, record keeping, case file management and transmission, and case effectuation responsibilities be divided between the existing contractors and the QICs.

• Who will conduct expedited determinations, how will the process work, and what if any financial protections will be involved.

Each year, more than 5 million Medicare claim appeals are filed with 54 CMS contractors—the FIs and carriers—and upper level appeals may be heard by any one of an estimated 1,000 SSA ALJs or by the MAC. The introduction of QICs into this process adds a new level of complexity, as the questions above demonstrate. As we transition to the new appeals process envisioned by BIPA, it is crucial that implementation be carried out uniformly and that our implementation plans be clear to the key stakeholders who will be affected by these changes in the claim appeals process, including not only the entities that adjudicate appeals, but also Medicare beneficiaries, providers, and suppliers. Attempting to resolve these types of issues and develop final regulations without public comment will clearly produce piecemeal public policy development. More importantly, it is unlikely to achieve the more efficient, more accurate appeals system that is the goal of the BIPA 521 provisions.

Thus, in view of the complex nature of the changes required by BIPA, we believe that it is essential to the public interest to carry out notice and comment rulemaking before implementing the new appeals provisions. This rulemaking effort is greatly complicated by the continuing uncertainty over resource availability and the possibility of further changes to the statutory appeals provisions. Moreover, we need to ensure that allocating scarce CMS resources to carry out this statutory mandate will not risk disruptions to other fundamental functions of the Medicare program, such as processing and payment of Medicare claims. Rather than risk disruptions to these core functions of the Medicare program, we believe that the more appropriate course is to continue to conduct appeals under the current system while simultaneously working toward effective BIPA implementation.

III. What Provisions Will Be Implemented on October 1, 2002?

While we cannot ignore the risks of proceeding directly to final regulations without public comment, CMS recognizes the urgent need for improvements to the Medicare claim appeals system. Additionally, we understand the benefits that the new appeals provisions afford to beneficiaries, providers, physicians and other suppliers of service. Therefore, we sought to determine the feasibility of implementing individual sections of 521 by evaluating each of the key BIPA provisions in terms of the following criteria:

• Do the new provisions fundamentally affect an individual's

right to appeal a denied claim, or do they primarily involve the applicable appeals procedures?

• Are the provisions clear and self-explanatory?

• Can the provisions be implemented by October 1, 2002, using existing CMS resources?

• Can the provisions be implemented appropriately under the existing appeals structure, that is, without the introduction of QICs into the administrative appeals process?

• In the short-term, will implementing a given provision on a stand-alone basis support, rather than undermine, Congress' statutory intent (and the Administration's shared goal) of producing more timely and accurate final decisions on Medicare claim appeals?

Our examination revealed three instances where all of these key questions could be answered affirmatively. Therefore, CMS will implement the following provisions on October 1, 2002:

We intend to implement the new 120-day deadline for filing requests for redeterminations, established under section 1869(a)(3)(C)(i). This change increases the existing 60-day deadline for requesting reconsiderations of Part A claims and decreases the 180-day deadline for requesting Part B reviews. This provision fundamentally affects an individual's right to appeal a denied claim, and its implementation is financially feasible. Therefore, CMS will implement these new filing deadlines for all initial determinations made on or after October 1, 2002 (*Note:* These deadlines do not apply to QIO determinations.)

We recognize that this change would establish a shorter deadline for Part B appeals, which could at least temporarily prove more difficult to meet for parties wishing to appeal Part B claims. We note though that it is generally in the best financial interest of an appellant to request an appeal and receive an appeal decision expeditiously. Also, particularly for beneficiary appellants, we believe that uniform appeals filing deadlines for Part A and B claims represents another positive aspect of this change. However, to alleviate any hardship associated with the possible need to gather documentation faster than in the past in order to comply with the new statutory filing deadlines, we are instructing CMS contractors, under these limited circumstances, to grant requests for extensions of up to 60 days in the filing deadline for Part B claims that are based on an explanation from the patient, provider, or supplier that the time was needed to gather the necessary supporting records.

Revised section 1869(b)(1)(E) specifies that the amount in controversy (AIC) threshold for requesting an ALJ hearing is $100, as opposed to the thresholds of $500 for Part B appeals and $200 for appeals of QIO determinations. It also stipulates the circumstances under which appellants may aggregate appeals to meet the AIC threshold. We believe that the reduced threshold is an unambiguous change that fundamentally affects an individual's right to appeal a denied claim. Therefore, CMS will implement the new amount in controversy requirements for Part B ALJ hearings and ALJ hearings for QIO initial determinations specified in section 521 of BIPA for initial determinations made on or after October 1, 2002. Contractors should continue to follow the existing instructions for aggregation of claims to meet the AIC threshold—thus the rules at 42 CFR 405.740 and 405.817 governing aggregation continue to apply. We note that the new statute does not establish an amount in controversy threshold for QIC reviews; and section 1842(b)(3), which was not repealed by section 521, sets a $100 AIC threshold for fair hearings. Thus, we believe it is appropriate to continue a $100 AIC threshold for carrier fair hearings.

Revised section 1869(a)(3) deals with redeterminations. Redeterminations under BIPA are to be conducted by the same CMS contractors that made the initial determinations. BIPA section 521 did not repeal either section 1816(f)(2)(A) or section 1842(b)(2)(B)(i), which currently set specific time frames for FI reconsiderations and carrier reviews, respectively. The general rules and limitations established under sections 1869(a)(3)(A) and (B) basically mirror current policy, for example, a contractor's review of the initial determination must precede a higher level appeal and that no redetermination may be made by an individual involved in the initial determination. Therefore, for initial determinations made on or after October 1, 2002, existing CMS contractors will continue to follow the provisions in sections 1816(f) and 1842(b) of the Social Security Act for both Part A reconsiderations and Part B reviews.

The remaining provisions in section 521 of BIPA, when evaluated using the criteria mentioned above, resulted in negative responses to all or most of the questions posed. We will discuss each of these below, in the order in which they appear in the revised section 1869 of the Act.

Section 1869(a)(2)(A) of the Act, as amended by BIPA, requires certain initial determinations to be concluded and notice provided no later than 45 days following receipt of the claim by the fiscal intermediary or carrier. Under the current process, providers are given 45 days to produce additional medical documentation. Thus, the imposition of a 45-day decision-making time frame creates substantial financial pressure on the existing medical review structure. Additionally, since providers, physicians, and other suppliers will receive significantly less time to respond to document requests, we believe that these entities will want an opportunity to comment on how these decision-making deadlines are to be implemented. Therefore, we will address this issue in the forthcoming proposed rule.

Section 1869(a)(3)(C)(ii) of the Act, as amended by BIPA, requires that all redeterminations of initial determinations made on or after October 1, 2002 be issued within 30 days. This reduction of the current timeframes established by sections 1816(f)(2) and 1842(b)(2) of the Act, creates a strain on the existing appeals structure and requires significant additional resources to implement. Given these considerations, we are unable to implement this requirement immediately. Instead, we will continue to hold contractors to the existing statutory standards in sections 1816(f)(2) and 1842(b)(2) of the Act, that is, 90 percent of Part A reconsideration decisions within 90 days, and 95 percent of Part B review decisions within 45 days.

Section 1869(b)(1) of the Act contains a series of new provisions concerning Medicare claim appeals, including the general rule under paragraph (b)(1)(A) that any individual who is dissatisfied with a redetermination decision can request a reconsideration of this decision by a QIC before proceeding to an ALJ hearing. As discussed in detail above, we do not believe it is feasible or consistent with other policy considerations to immediately implement this new level of appeal; thus we do not intend to introduce this change until QICs are in place to carry out these reconsiderations.

Sections 1869(b)(1)(B) and (C) address provider and supplier representation and assignment issues. To the extent that these provisions represent departures from existing requirements, we do not view them as self-explanatory and instead believe that they warrant notice and comment rulemaking before they can be implemented. Thus, we do not intend to make any changes in

existing regulatory appeal procedures based on these provisions effective October 1, 2002. The existing regulations regarding representation (at 20 CFR Subpart R, and 42 CFR 405.870 and 405.872) will continue in effect until full BIPA implementation.

Section 1869(b)(1)(D) addresses the time limits for filing upper level appeals. The statute charges the Secretary with establishing in regulations time limits for filing requests for ALJ hearings. We believe that the public, especially the beneficiary population, will want an opportunity to comment on the filing deadlines that will govern their ALJ hearing requests, and, therefore, we will address this issue in the forthcoming proposed rule.

Section 1869(b)(1)(F) establishes a new requirement for expedited determinations in the cases of individuals who are dissatisfied with provider decisions to terminate their care. There are many significant issues related to these new provisions, including who should conduct these determinations, to whom should these provisions apply, and related financial liability and notice requirements. Although Quality Improvement Organizations have performed a comparable function for hospital discharges for many years, the new expedited determination process is much broader in scope and will require substantial additional resources and new contractual obligations. We also believe that the beneficiary population and other stakeholders will be interested in commenting on any rules governing expedited determinations. In view of these considerations, we are unable to implement these provisions effective October 1, 2002. We will discuss these complex issues in detail in our upcoming proposed rule.

As the statute provides under section 1869(b)(1)(G), we also will establish through rulemaking guidelines with respect to the reopening and revision of initial determinations and reconsidered determinations.

Section 1869(c) sets forth a series of requirements for conducting QIC reconsiderations. Until the Secretary enters into contracts with these new entities, we are unable to implement these provisions. As noted above, we believe it would be impractical to begin the formal procurement process until we have reasonable assurances that we can allocate adequate resources to commit to these contractual obligations. To the extent that we are unable to commit to future contractual obligations, we believe that it would be impractical at this time to begin the formal contract procurement process, and thus expect private-sector entities to expend resources preparing their proposals. Thus, carriers will continue to conduct fair hearings in accordance with section 1869 of the Act, prior to its amendment by BIPA, and existing regulations.

Section 1869(d) of the Act sets forth the remaining substantive changes to the Medicare administrative appeals procedures. These changes all involve the procedures and deadlines for upper level appeals, that is, hearings before SSA ALJs, reviews by the MAC at the DAB, and judicial review. Like the provisions set forth under new section 1869(c), we believe that these new requirements are clearly premised on, and build upon, the conduct of a previous reconsideration by the new QIC entities. In fact, section 1869(d)(1) which contains the deadlines for ALJ hearings specifically states that the deadlines apply for a ''hearing on a decision of a qualified independent contractor.'' Similarly, section 1869(d)(2), which contains the deadlines on DAB proceedings, puts those deadlines in the context of ''decisions on a hearing described in paragraph (1)''—that is, reviews of ALJ hearings on decisions made by QICs.

Without QICs, there is no reasonable expectation that the new 90-day deadlines for ALJ and DAB decisions can be met. With fully operational QICs, on the other hand, working in concert with other systemic improvements envisioned by the statute (such as, an appeal-specific data base) there is reason to believe that the volume of Medicare claims decisions that will reach these upper levels of the appeals system can be significantly reduced—eventually making attainable the new deadlines established under section 1869(d).

Much like section 1869(c)(3)(C)(ii) of the Act, section 1869(d)(3) contains provisions concerning the consequences of a failure by an ALJ or the DAB to meet the new 90-day deadlines for decision-making. In brief, the statute gives an appellant the option of escalating a case to the next level of appeal, and also to Federal district court, if a decision is not issued within the prescribed timeframe. These decision-making deadlines are premised in statute on the sequential introduction of QICs, under section 1869(c). Without QICs, we do not believe that these deadlines can be met. Thus, as a practical reality, implementing these escalation provisions has the potential to result in cases escalating to Federal court without benefit of the record developed during an ALJ hearing. Under a worst case scenario, the prospect would exist of Federal courts being inundated by more than 10,000 cases that now are heard annually by the MAC, or of the introduction of an endless loop where cases are remanded from the courts to the MAC to the ALJs in search of a timely decision. We do not believe that these prospects are consistent with statutory intent or responsible government, and thus we do not believe that these escalation provisions can be implemented effective October 1, 2002. The next section of this ruling discusses how contractors will be expected to implement all aspects of this ruling, including how to deal with escalation requests.

IV. Responsibilities of Medicare Contractors Under This Ruling

Until QICs are established and final regulations to implement section 521 of BIPA are issued, Medicare contractors (that is, FIs, carriers, and QIOs) generally should continue to follow current practices, consistent with section 1869 of the Act prior to its amendment by BIPA, and consistent with existing regulations, in making initial determinations and carrying out Medicare claim appeals and reviews of hospital discharges. As explained in Section III of this Ruling, the only substantive changes to these provisions involve the new 120-day deadline for filing for carrier reviews or FI reconsiderations and the reduction of the AIC threshold to $100 for an ALJ hearing for the Part B claim determinations or QIO determination appeals process. Contractors should not implement other provisions contained in section 521 of BIPA until further notice.

If an FI receives a request for a QIC reconsideration of a Part A claim denial that has been upheld on the FI's reconsideration, the contractor should treat the request as a request for a hearing before an ALJ and process it accordingly. After following the appropriate processing requirements, contractors should retain a copy of the request onsite and mail a copy of the request to: BIPA Lead, CMS, Mail Stop S1–05–06, 7500 Security Boulevard, Baltimore, MD 21244. If a carrier or FI receives a request for a QIC reconsideration of a Part B claim denial that has been upheld on review, the contractor should treat the request as a request for a fair hearing, and process it accordingly. After following the appropriate processing requirements, contractors should retain a copy of the request onsite and mail a copy of the request to: BIPA Lead, CMS, Mail Stop

S1–05–06, 7500 Security Boulevard, Baltimore, MD 21244.

If a contractor receives a request to escalate an appeal to the ALJ hearing level (or the MAC level) because the contractor (or the ALJ) has not issued a timely decision on the appeal, the contractor should inform the appellant of the delay in implementation of the BIPA provisions, referencing this Ruling, and explain that the appeal will be processed under the existing appeals procedures. The contractor should note that the contractor (or the ALJ) will notify the appellant of its decision on the case and of any subsequent right the appellant may have to an ALJ hearing (or MAC review) on the decision. If the appellant makes such an appeal, a copy of the contractor's correspondence with the appellant should be sent to the ALJ (or the MAC), including a copy of the appellant's request for escalation.

If an ALJ or the MAC requests case files from a contractor in order to process a request to escalate an appeal, the contractor should notify the ALJ or the MAC, in writing, that the case file is currently being used to process a request for appeal at the review, reconsideration or fair hearing level, as appropriate. In that situation, contractors should indicate that the case file will be transmitted when the carrier, FI or hearing officer completes its review. Contractors should retain a copy of the request onsite and mail a copy of the request to: BIPA Lead, CMS, Mail Stop S1–05–06, 7500 Security Boulevard, Baltimore, MD 21244.

Finally, QIOs should continue to review hospital discharges in accordance with §§ 1154(a) and 1154(e) of the Act, with respect to time frames and financial liability.

Authority: Section 1154, 1869, and 1879 of the Social Security Act (42 U.S.C. 1395ff) and section 521 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554.

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

Dated: September 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–25351 Filed 10–1–02; 4:05 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of new System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, called the ''Privacy Accountability Database (PAD),'' HHS/CMS/OIS No. 09–70–0540. The primary purpose of the system of records is to aid CMS in tracking, reporting, and accounting the disclosures made from all CMS system of records as permitted by the Privacy Act of 1974 and The Health Insurance Portability and Accountability Act of 1996 (HIPAA). Information retrieved from this system of records will be used to support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and support litigation involving the agency.

We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section, below. Although the Privacy Act requires only that the ''routine use'' portion of the system be published for comment, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 19, 2002. In any event, we will not disclose any information under a routine use until forty (40) calendar days after publication. We may defer implementation of this system of records or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Kimberly Elmo, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

SUPPLEMENTARY INFORMATION:

I. Description of the New System of Records

A. Statutory and Regulatory Basis for System of Records

42 CFR 401.101–401.148 and 1106(a) of the Social Security Act, 42 U.S.C. 1306(a), 45 CFR 552a(c) of the Privacy Act and 45 CFR 164.528 of the Health Insurance Portability and Accountability Act.

B. Background

CMS administers the Medicare, Medicaid, and the State Children's Health Insurance Program to accomplish its mission of ensuring health care security for beneficiaries. Accordingly, CMS possesses the nation's largest collection of health care data (consisting of over 60 system of records), with information on over 74 million Americans. Having in place adequate electronic and procedural controls to address confidentiality will protect this personally identifiable data.

Data files consisting of personally identifiable data are disclosed to various entities. These disclosures fall under exceptions of the Privacy Act, routine uses of the applicable system of record or are permitted by HIPAA. Privacy legislation requires CMS to track disclosures from each individual system of records. The PAD will provide the necessary tracking, reporting and accounting capabilities that CMS must have in place to be in compliance with the Privacy Act of 1974 and HIPAA.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The PAD will contain information on disclosures of CMS data that fall under exceptions of the Privacy Act; routine uses of the applicable system of record or permitted by HIPAA that require tracking. This system may also contain the Medicare Health Insurance Claim Number, Social Security Number, or Railroad Retirement Board Number and a PAD tracking number for Medicare beneficiaries whose CMS data have been disclosed.

The PAD will be implemented in phases. The initial fielding, scheduled to coincide with the April 14, 2003

HIPAA Privacy Rule compliance date, will capture and record applicable disclosure tracking information for enrollment and claims databases only (09–70–0536 Medicare Beneficiary Database and 09–70–0005 National Claims History National Medicare Utilization Database). These two databases contain the information most requested and, subsequently, serve as the source for the most frequently disclosed information. This phased implementation is based on architectural and technical limitations that exist in the CMS data center today. Modernization and reengineering initiatives are ongoing to increase cross-platform compatibility and integration. The PAD will incorporate accounting of additional databases as they are integrated into the new environment. This SOR will be republished as necessary.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release PAD information that can be associated with an individual as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use.'' Both identifiable and non-identifiable data may be disclosed under a routine use. Identifiable data includes individual records with PAD information and identifiers. Non-identifiable data includes individual records with PAD information and masked identifiers or PAD information with identifiers stripped out of the file.

CMS will only disclose the minimum personal data necessary to achieve the purpose of the PAD. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data are being collected; *e.g.*, tracking, reporting and accounting the disclosures made from all CMS systems of records as permitted by the Privacy Act and HIPAA.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would, in fact, accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually, identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities That May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PAD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. CMS proposes to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

CMS contemplates disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing agency business functions relating to purposes for this system of records.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Individuals sometimes request the help of a Member of Congress in resolving some issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government;

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

B. Additional Provisions Affecting Routine Use Disclosures

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

IV. Safeguards

The PAD system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by OMB Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A-C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

—*Database Administrator* class owns the database objects (*e.g.*, tables, triggers, indexes, stored procedures, packages) and has database administration privileges to these objects.

—*Quality Control Administrator* class has read and write access to key fields in the database;

—*Quality Index Report Generator* class has read-only access to all fields and tables;

—*Policy Research* class has query access to tables, but are not allowed to access confidential patient identification information; and

—*Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites will implement the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system:

Access to all servers is to be controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server is to require a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

—*User Log-on*—Authentication is to be performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.

—*Workstation Names*—Workstation naming conventions may be defined and implemented at the agency level.

—*Hours of Operation*—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are to be determined and implemented at the agency level.

—*Inactivity Lockout*—Access to the NT workstation is to be automatically locked after a specified period of inactivity.

—*Warnings*—Legal notices and security warnings are to be displayed on all servers and workstations.

—*Remote Access Security*—Windows NT Remote Access Service (RAS) security handles resource access control. Access to NT resources is to be controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: The Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; Information Resource Management Circular #10; HHS AIS Security Program; the CMS Information Systems Security Policy, Standards, and Guidelines Handbook; and other CMS systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the New System on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of PAD data. PAD information is submitted to CMS through standard systems. CMS will use a variety of onsite and offsite edits and audits to increase the accuracy of PAD data.

CMS will take precautionary measures (*see* item IV., above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy

as a result of maintaining this system of records.

Dated: September 19, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

09–70–0540

SYSTEM NAME:

Privacy Accountability Database (PAD), HHS/CMS/OIS.

SECURITY CLASSIFICATION:

Level 3, Privacy Act Sensitive.

SYSTEM LOCATION:

HCFA Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. CMS contractors and agents at various locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will contain the Medicare Health Insurance Claim (HIC) Number, Social Security Number, or Railroad Retirement Board Number for Medicare seneficiaries whose CMS data have been disclosed under exceptions of the Privacy Act, routine uses of the applicable system of record or are permitted by HIPAA. .

CATEGORIES OF RECORDS IN THE SYSTEM:

The PAD will contain information on disclosures of CMS data that fall under exceptions of the Privacy Act; routine uses of the applicable system of record or permitted by HIPAA that require tracking. This system may also contain the Medicare Health Insurance Claim (HIC) Number, Social Security Number, or Railroad Retirement Board Number for Medicare beneficiaries whose CMS data have been disclosed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 CFR 401.101–401.148 and sec 1106(a) of the Social Security Act, 42 U.S.C. 1306(a), 45 CFR 552a(c) of the Privacy Act and 45 CFR 164.528 of the Health Insurance Portability and Accountability Act.

PURPOSE(S):

The primary purpose of the systems of records is to aid CMS in tracking, reporting, and accounting the disclosures made from all CMS system of records as permitted by the Privacy Act of 1974 and The Health Insurance Portability and Accountability Act of 1996 (HIPAA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the PAD without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). Be advised, this System of Records contains Protected Health Information as defined by the Department of Health and Human Services' (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 8462 as amended by 66 FR 12434). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

1. To agency contractors, or consultants that have been contracted by the agency to assist in the performance of a service related to this system of records and that need to have access to the records in order to perform the activity.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity; or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreedto represent the employee, or

d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and magnetic media.

RETRIEVABILITY:

The Medicare records are retrieved by Health Insurance Claim Number, Social Security Number, or Railroad Retirement Board Number of the beneficiary and PAD tracking number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the CMS system. For computerized records, safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Information Systems Security, Standards Guidelines Handbook and OMB Circular No. A–130 (revised) Appendix III.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established CMS, Privacy Act and HIPAA retention guidelines. CMS will conduct periodic reviews to determine if these records are historical and should be placed in permanent files after established retention periods and administrative needs of CMS have elapsed.

Note: The Department of Justice issued a directive in 1992 prohibiting the destruction of Medicare claims/administrative records. Therefore, all Medicare claims-related/administrative data will be retained until the freeze is lifted.''

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Data Liaison and Distribution, Enterprise Databases Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager, who will require the system name, the subject individual's name (woman's maiden name, if applicable), social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of correspondence and control number.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

CMS's National Claims History system of records, Enrollment Database system of records, Medicare Beneficiary Database system of records, and Medicaid Statistical Information System of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–25427 Filed 10–4–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Online Interstate Referral Guide (IRG).

OMB No.: 0970–0209.

Description: The IRG is an essential reference maintained by OCSE that provides States with an effective and efficient way of viewing and updating State profile, address, and FIPS code information by consolidation data available through numerous discrete sources into a single centralized, automated repository.

Respondents: State IV–D Child Support Programs.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Online IRG	54	18	.3	292

Estimated Total Annual Burden Hours: 292.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 02447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–25424 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: OCSE–369A: Financial Report; and OCSE–34A: Quarterly Report of Collections.

OMB No.: 0970–0181.

Description: Each State agency administering the Child Support Enforcement Program under Title IV–D of the Social Security Act is required to provide information to the Office of Child Support Enforcement concerning its administrative expenditures and its receipt and disposition of child support payments from non-custodial parents. These quarterly reporting forms enable each State to provide that information, which is used to compute both the quarterly grants awarded to each State and the annual incentive payments earned by each State. This information is also included in a published annual statistical and financial report, available to the general public.

Comments sent to the Office of Child Support Enforcement, both directly and in response to an earlier **Federal Register** Notice (67 FR 39727, *et seq.*), provided many useful recommendations to update and correct these financial reporting forms. However, several comments strongly indicated that State agencies would have inadequate time to incorporate these revisions in time to meet the reporting requirements for the fiscal year beginning October 1, 2002. In addition, legislation has been introduced in Congress that, if enacted, may require additional revisions to these forms.

For these reasons, we have decided to request that the expiration date of the existing forms be extended, without change, through September 30, 2004.

Respondents: State agencies administering the Child Support Enforcement Program.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–396A	54	4	8	1,728
OCSE–34A	54	4	8	1,728

Estimated Total Annual Burden Hours: 3,456.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 1, 2002.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 02–25425 Filed 10–4–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Los Angeles District Office; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA) is announcing a meeting which is intended to give the drugs, devices, and biologics industries and consumers an opportunity to exchange information with the FDA Los Angeles District staff. The main focus of the meeting is to provide an opportunity for the Los Angeles District leadership to interact with industry and the public, and to discuss regulatory affairs, plans, and future programs. The open house is sponsored by the Orange County Regulatory Affairs Discussion Group (OCRA).

Date and Time: The open house will be held on Tuesday, October 22, 2002, from 6 p.m. to 9 p.m.

Location: The open house will be held at FDA Los Angeles District, 19900 MacArthur Boulevard, suite 300, Irvine, CA 92612.

Contact: Ramlah Oma, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7611, FAX: 949–798–7656, or Jack Dhuwalia, OCRA, PMB 624, 5405 Alton Pkwy, suite 5A, Irvine, CA 92604, 888–532–4357, FAX: 949–854–2672, Internet: www.ocra-dg.org.

Registration and open house Information: For registration information, including registration form and electronic payment, see the OCRA Internet site at www.ocra-dg.org (click on '' OCRA meetings'').

Registrations fees are $40.00 for members of OCRA, Southern California Pharmaceutical Discussion Group (SCPDG), and Parenteral Drug Association (PDA), and $45.00 for nonmembers. The cost includes hot and cold hors d'oeuvres, dessert and nonalcoholic beverages, but excludes parking fees.

If you need special accommodations due to a disability, please contact Ramlah Oma (see *Contact*) at least 7 days in advance.

Dated: October 1, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25392 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0385]

Guidance on the Petition Process to Request Approval of Labeling for Foods That Have Been Treated By Irradiation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance; Implementation of Section 10809 of the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, § 10809 (2002) Regarding the Petition Process to Request Approval of Labeling for Foods That Have Been Treated By Irradiation,'' which explains the recommended process for petitioning the agency for approval of labeling, which is not false or misleading in any material respect, of a food that has been treated by irradiation.

DATES: Submit written or electronic comments at any time.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document implementing the part of section 10809 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171, § 10809 (2002)), that states that ''[p]ending promulgation of the final rule * * *, any person may petition the Secretary [FDA] for approval of labeling, which is not false or misleading in any material respect, of a food which has been treated by irradiation using radioactive isotope, electronic beam, or x-ray.'' Section 10809 of the Farm Security and Rural Investment Act of 2002 also requires that, pending promulgation of the final rule, ''[t]he Secretary [FDA] shall approve or deny such a petition within 180 days of receipt of the petition, or the petition shall be deemed denied, except to the extent additional agency review is mutually agreed upon by the Secretary [FDA] and the petitioner.''

FDA is issuing this guidance to interested parties who wish to petition the agency for approval of the labeling of a food treated by irradiation. As explained in the guidance, FDA recommends that interested parties who wish to petition the agency use the procedures set forth in § 10.30 (21 CFR 10.30), except that § 10.30(e)(2)(iii), regarding 180-day tentative responses,

does not apply, because section 10809 of the Farm Security and Rural Investment Act of 2002 provides that the petition is deemed denied if the Secretary (FDA) fails to act on the petition within 180 days of its receipt, unless the parties mutually agree upon an extension.

This guidance is a level 1 guidance issued consistent with FDA's good guidance practices regulation (§ 10.115 (21 CFR 10.115)). The agency is soliciting public comment, but is implementing this guidance document immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate. The Farm Security and Rural Investment Act of 2002 (Public Law 107–171) was enacted on May 13, 2002, and section 10809 is now in effect and must be implemented immediately. Thus, there is a pressing need for guidance to help effect such implementation. Accordingly, FDA is making this guidance effective immediately. This guidance represents the agency's current thinking on this subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in citizen petitions under § 10.30 is approved under OMB control number 0910–0183.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on this guidance at any time. Groups or organizations must submit two copies of any written comments. Individuals may submit one copy of their comments. Identify your written comments by placing the docket number at the top of your comment(s). If you base your comments on scientific evidence or data, please submit copies of the specific information along with your comments. Any comments submitted will be filed under the docket number identified in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/~dms/guidance.html*.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25390 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0009]

Draft Guidance for Industry: Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices.'' This draft guidance document is intended to provide processors of juice concentrates and certain shelf stable juice products with recommendations for the use of appropriate control measures to ensure that juice concentrates and certain shelf stable juices do not become contaminated or recontaminated with microbial pathogens during bulk transport.

DATES: Submit written or electronic comments concerning the draft guidance by December 6, 2002, to ensure adequate consideration in the preparation of the final guidance document. Comments on this guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to Amy Green (*see* **FOR FURTHER INFORMATION CONTACT**). *See* **SUPPLEMENTARY INFORMATION** section for electronic access to this draft guidance.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025, FAX 301–436–2651.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed the draft guidance document to provide processors of juice concentrates and certain shelf stable juice products with recommendations for the use of appropriate control measures to help ensure that juice concentrates and certain shelf stable juice products do not become contaminated or recontaminated with microbial pathogens during bulk transport. The draft guidance recommends control measures for several transport modalities, including: (1) Multiuse or reusable containers (*e.g.*, tankers, reusable drums without liners, and reusable totes without liners) and (2) single-use sanitary containers or liners (*e.g.*, single-use sanitary totes, single-use sanitary drums, bag-in-box containers, totes with single-use sanitary liners, and drums with single-use sanitary liners). The draft document describes five major areas of concern with bulk transport systems, special considerations for tankers, and provides examples of a cleaning and sanitizing protocol for a tanker, control measures that might be used in loading and unloading a tanker, and critical control points a producer might use to include bulk transport in its hazard analysis critical control point (HACCP) plan.

This draft guidance is partly in response to a citizen petition submitted by certain representatives of the juice industry asking that FDA: (1) Amend 21 CFR 120.24(c) to exempt processors of juice concentrate and certain shelf stable juice products from the ''single facility requirement'' and (2) delay the effective date of the ''single facility requirement'' until the agency has disposed of the citizen petition. The petitioners contend that transportation hazards, which the ''single facility requirement'' was designed to address, could be adequately addressed as part of a processor's HACCP plan. This draft guidance provides recommendations that producers and users of juice concentrates and certain shelf stable juice products can use to prevent, reduce to acceptable levels, or eliminate the risk of contamination or recontamination of these products with microbial pathogens during bulk transport and thus satisfy the conditions under which FDA will consider the exercise of enforcement discretion.

The draft guidance entitled ''Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable

Juices'' is being issued as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance represents the agency's current thinking on this subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/~dms/guidance.html*.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25342 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0384]

Draft Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing'' (the draft guidance). The draft guidance advises juice processors of FDA's view that the first edition of the ''Juice HACCP Training Curriculum'' of the Juice HACCP Alliance (the standardized curriculum) is adequate for use in training individuals to meet the requirements of the juice hazard analysis and critical control point (HACCP) regulation. The draft guidance also advises processors and educators on how the requirements of the juice HACCP regulation may be met using the standardized curriculum or alternative curricula for training individuals and on how they can view, download, or purchase the standardized curriculum.

DATES: Submit written or electronic comments concerning this draft guidance by December 6, 2002, to ensure adequate consideration in preparation of the final guidance document. Comments on this draft guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to Michael E. Kashtock, (see **FOR FURTHER INFORMATION CONTACT**). Send two self-addressed adhesive labels to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2022, FAX 301–436–2651, e-mail: mkashtoc@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's juice HACCP regulation in part 120 (21 CFR part 120) includes in §120.13 a requirement that individuals who perform certain specified functions, e.g., developing the hazard analysis or the HACCP plan, ''shall have successfully completed training in the application of HACCP principles to juice processing at least equivalent to that received under standardized curriculum recognized as adequate by the Food and Drug Administration, or shall be otherwise qualified through job experience to perform these functions.'' This draft guidance advises juice processors of FDA's view that the first edition of the ''Juice HACCP Training Curriculum'' of the Juice HACCP Alliance (coordinated through the efforts of the National Center for Food Safety and Technology at the Illinois Institute of Technology) (the standardized curriculum) is adequate for use in training individuals to meet the requirements of the juice HACCP regulation. This guidance also advises processors and educators on how the requirements of the juice HACCP regulation may be met using the standardized curriculum or alternative curricula for training individuals and on how they can view, download, or purchase the standardized curriculum.

The draft guidance entitled ''Guidance for Industry: Standardized Training Curriculum for Application of HACCP Principles to Juice Processing,'' is being issued as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This draft guidance represents the agency's current thinking on curricula for training juice processing personnel in the application of HACCP principles to juice processing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at the CFSAN Web site at http://www.cfsan.fda.gov/~dms/guidance.html.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25391 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0493]

Guidance for Industry: Exemptions From the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction.'' This guidance is intended to provide revised FDA guidance to small and very small fruit and vegetable juice processors for effectively achieving a 5-log pathogen reduction that is the basis for exempting juice products from the warning label requirement established by the final rule entitled ''Food Labeling: Warning and Notice Statement: Labeling of Juice Products'' (''the juice labeling rule''). A 5-log pathogen reduction is also a requirement of the final rule entitled ''Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice'' (the ''juice HACCP rule'').

DATES: Submit written or electronic comments concerning the guidance at any time.

ADDRESSES: Submit written requests for single copies of this guidance entitled ''Guidance for Industry: Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction'' to Jennifer A. Burnham (*see* **FOR FURTHER INFORMATION CONTACT**).

Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Burnham, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, 301–436–2030, FAX: 301–436–2632.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2001, FDA issued a draft guidance document that outlined the agency's current recommendations for effectively achieving a 5-log pathogen reduction in juice. The purpose of this draft guidance was to encourage processors who are not subject to the juice HACCP rule and who are performing a 5-log pathogen reduction to attain exemption from the warning label requirement to apply effective 5-log pathogen reduction treatments based upon FDA's most current scientific understanding. In the **Federal Register** notice of December 21, 2001 (66 FR 65978), announcing the availability of the draft guidance document, FDA provided a 60-day period for comment on the draft guidance.

FDA received four comments in response to the December 21, 2001, draft guidance document. These comments represented the views of trade associations representing small farm family citrus operations, commercial fresh citrus shippers, juice and juice beverage producers and suppliers, and a public health group. The comments suggested changes or modifications to FDA's revised recommendations for effectively achieving a 5-log pathogen reduction. FDA has considered the submitted comments and determined that the suggested changes or modifications are beyond the scope of this guidance or are not consistent with FDA's current scientific understanding of pathogen reduction. On its own initiative, FDA is making certain editorial changes in the guidance.

II. Conclusion

The agency is adopting the revised recommendations for effectively achieving a 5-log pathogen reduction that is the basis for exempting juice products from the warning label requirement as presented in the draft guidance document. After considering the comments the agency received, the agency has determined that no changes are warranted.

The guidance entitled ''Guidance for Industry: Exemptions from the Warning Label Requirement for Juice—Recommendations for Effectively Achieving a 5-Log Pathogen Reduction'' is being issued as a level 1 guidance, consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current recommendations for effectively achieving a 5-log pathogen reduction in juice. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (*see* **ADDRESSES**) on this guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/~dms/guidance.html*.

Dated: September 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–25341 Filed 10–4–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 6, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–016881

Applicant: Hawthorn Corporation, Grayslake, Illinois

The applicant requests a permit to export , re-export, and re-import captive-born tigers (*Panthera tigris*) and future progeny born outside of the United States currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–062075

Applicant: The Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to export , re-export, and re-import captive-born tigers (Panthera tigris) and future progeny born outside of the United States currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–062056

Applicant: Columbus Zoo and Aquarium, Powell, Ohio

The applicant requests a permit to transfer from the Miami Metro Zoo, Miami, Florida to the Columbus Zoo And Aquarium, Powell, Ohio, live Komodo island monitors (Varanus komodoensis) for the purpose of enhancement of the survival of the species through conservation for a period of five years.

PRT–050415

Applicant: Big Game Alaska Inc, Portage Glacier, AK

The applicant requests a permit to import 5 live captive-born wood bison from LaPrarie Woodland Bison Ranch Whitehorse, Yukon Territory, Canada, for the purpose of enhancement of the survival of the species through propagation.

PRT–058654

Applicant: Oregon Graduate Institute, Beaverton, OR

The applicant requests a permit to import biological samples (trunk mucus) taken from two captive held Asian elephants (*Elephas maximus*) that were born in the wild. The elephants are current residents of the Auckland Zoo, Auckland, New Zealand, their samples will be used for scientific research purposes. This notification covers activities conducted by the applicant for a five-year period.

PRT–058905

Applicant: Oregon Graduate Institute, Beaverton, OR

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the permittee's collection for scientific research. This notification covers activities conducted by the applicant for a five year period.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–061116

Applicant: James L. Scull, Jr., Rapid City, SD

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: September 27, 2002.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–25383 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 6, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–062382

Applicant: Eddie R. Simone, Ogden UT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa,

for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: September 20, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–25384 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Endangered Species Recovery Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (Service) , solicit review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before November 6, 2002, to receive our consideration.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–776608

Applicant: Monk & Associates LLC, Walnut Creek, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

Permit No. TE–028605

Applicant: SWCA Inc., Environmental Consultants, Mission Viejo, California.

The permittee requests an amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) and the California least tern (*Sterna antillarum browni*) in conjunction with demographic research throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–060971

Applicant: Paul De Ley, University of California, Riverside, California.

The applicant requests a permit to take (collect) the cysts of the Riverside fairy shrimp (*Streptocephalus woottoni*), and remove/reduce to possession root material of *Eryngium aristulatum* var. *parishii* (San Diego button-celery) and *Orcuttia californica* (California Orcutt grass) in conjunction with research on nematodes in Riverside County, California for the purpose of enhancing their survival.

Permit No. TE–061146

Applicant: Deborah Clark, Corvallis, Oregon.

The applicant requests a permit to take (kill) the Fender's blue butterfly (*Icaricia icarioides fenderii*) in conjunction with habitat restoration using herbicides in Benton County, Oregon for the purpose of enhancing its survival.

Permit No. TE–061625

Applicant: Stephanie Owens, San Diego, California.

The applicant requests a permit to take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with demographic research throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–797267

Applicant: H.T. Harvey and Associates, San Jose, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the Sonoma and the Santa Barbara DPSs of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma and Santa Barbara Counties, California for the purpose of enhancing their survival.

Permit No. TE–061844

Applicant: Nathaniel Goldstein, Boulder, Colorado.

The applicant requests a permit to take (harass by survey, fin clip, release, and remove from the wild) the Ash Meadows pupfish (*Cyprinodon nevadensis mionectes*) in conjunction with demographic research in the Ash Meadows Wildlife Refuge in Nevada for the purpose of enhancing its survival.

Permit No. TE–061375

Applicant: Renee Spenst, Sacramento, California.

The applicant requests a permit to take (harass) the California clapper rail (*Rallus longirostris obsoletus*) and the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with scientific research in Alameda and Solano Counties, California for the purpose of enhancing their survival.

Permit No. TE–815537

Applicant: Karen Swaim, Livermoore, California.

The permittee requests an amendment to take (insert passive integrated transponder tags and tail clip) the San Francisco garter snake (*Thamnophis sirtalis*) in conjunction with scientific research throughout the range of the species for the purpose of enhancing its survival.

Permit No. TE–059612

Applicant: David Armes, Fresno, California.

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), the vernal pool tadpole shrimp (*Lepidurus packardi*), and the Riverside fairy shrimp (*Streptocephalus wootoni*) in conjunction with surveys throughout the range of each species for the purpose of enhancing their survival.

Permit No. TE–023250

Applicant: Department of the Navy, San Diego, California.

The permittee requests an amendment to remove/reduce to possession (collect plants, tissue, and seeds) the *Sibara filifolia* (Santa Cruz Island rock cress) and *Lithophragma maximum* (San Clemente Island woodland star) in conjunction with propagation studies and surveys for genetic variation in the Channel Islands, California for the purpose of enhancing their survival.

Permit No. TE–062121

Applicant: Ryan R. Young, Carlsbad, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*), the light-footed clapper rail (*Rallus longirostris levipes*), and the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with demographic surveys in San Diego, Ventura, Orange, Imperial, Kern, and San Bernardino Counties in California; and Yuma, La Paz, and Mohave Counties in Arizona for the purpose of enhancing their survival.

Permit No. TE–062335

Applicant: City of Santa Rosa, Santa Rosa, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Sonoma distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) in conjunction with demographic research in Sonoma County, California for the purpose of enhancing its survival.

FWS solicits public review and comment on each of these permit applications.

Dated: September 20, 2002.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 02–25456 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the SUPPLEMENTARY INFORMATION.

DATES: The Aquatic Nuisance Species Task Force will meet from 8:30 a.m. to 5 p.m., Wednesday, November 13, 2002; from 8:30 a.m. to 5 p.m., Thursday, November 14, 2002; and from 8:30 a.m. to 1 p.m., Friday, November 15, 2002.

ADDRESSES: The ANS Task Force meeting will be held at the Radison Waikiki Prince Kuhio, 2500 Kuhio Avenue, Honolulu, Hawaii 96815. Phone 808–922–0811.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: a field trip to view local invasive species problems; an update of activities from each of the Task Force's regional panels; submission of a Rapid Response Plan by the Western Regional Panel; status and updates from several other Task Force committees including the Prevention Committee, the Communications, Education and Outreach Committee, and the Research Committee; approval of the Draft Green Crab Control Plan; status of State and Interstate ANS Management Plans and approval of the Massachusetts State Plan; an update on ballast water management activities; a panel on the status of Brown Tree Snake activities; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary; Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: September 25, 2002.

Cathleen I. Short,

Co-chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 02–25382 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 0148813 and UTU 0148813A]

Public Land Order No. 7543; Partial Revocation of Public Land Order No. 4774; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a public land order insofar as it affects approximately 178 acres of National Forest System lands withdrawn for the Lodgepole, Hacking Lake, Yellow Pine, Beaver View, Upper Provo River Bridge, and Moosehorn Campgrounds and the Weber Cottonwood Picnic Ground. The withdrawal is no longer needed except on a portion of the lands withdrawn for the Lodgepole Campground. The lands included in the portion of the withdrawal being revoked will be opened to mining.

EFFECTIVE DATE: November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Shelley Paige, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5797.

SUPPLEMENTARY INFORMATION: The Forest Service has determined that the withdrawal is no longer needed on any of the lands except a portion of the Lodgepole Campground and has requested the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 4774, which withdrew lands for seven Forest Service recreation areas, is hereby revoked in its entirety except for the following described land:

Ashley National Forest
Lodgepole Campground
Salt Lake Meridian
T. 1 N., R. 22 E.,
Sec. 17, E½SE¼SW¼SW¼; sec.
Sec. 20, E½NE¼NW¼NW¼.

The area described contains 10 acres in Duchesne County.

2. At 10 a.m. on November 6, 2002, the lands described in Public Land Order No. 4774 (35 FR 4402, March 12, 1970), except those lands described in Paragraph 1, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of

record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 20, 2002.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 02–25437 Filed 10–4–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 74730]

Notice of Proposed Extension of Public Land Order No. 6368; Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to extend Public Land Order No. 6368 for a 20-year period. This order withdrew public lands from location and entry under the mining laws to protect the Horsethief and Natural Trap Caves in Big Horn County. The lands have been and will remain open to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by January 6, 2003.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth at 307–775–6124.

SUPPLEMENTARY INFORMATION: On September 13, 2002, a petition/application was approved allowing the Bureau of Land Management to file an application to extend Public Land Order No. 6368. This withdrawal was made to protect the important recreational, scientific, and educational values of the Horsethief and Natural Trap Caves. Public Land Order No. 6368 will expire on April 15, 2003.

The withdrawal comprises approximately 528.23 acres of public land as described below:

Sixth Principal Meridian
T. 58 N., R. 94 W.,
Sec. 20, lots 1 to 8, inclusive, and S½N½;
Sec. 21, lots 4, 5, and SW¼NW¼;
Sec. 28, S½SE¼.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension should submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This extension will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Dated: September 27, 2002.

Alan L. Kesterke,

Acting State Director.

[FR Doc. 02–25436 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

DATES AND LOCATION: The Advisory Council will conduct its annual meeting at the following time and location:

October 29, 2002—San Diego, California. The meeting will begin at 8:30 a.m. and recess at 12:30 p.m. and reconvene briefly the following day at 1 p.m. The meeting will be held in the Shelter Pointe Hotel and Marina, on Shelter Island, at 1551 Shelter Island Drive.

Agenda: The purpose of the meeting will be to discuss the accomplishments of federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Bureau of Reclamation, Bureau of Land Management, Fish and Wildlife Service, and United States Geological Survey of the Department of the Interior; the Natural Resources Conservation Service of the Department of Agriculture; and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the contents of the reports.

The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting. To allow full consideration of information by the Advisory Council members, written notice must be provided to Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received prior to the meeting will be provided to the Advisory Council members at the meeting.

It is the Bureau of Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the full extent allowable by law. To have your name and/or address withheld, please state this prominently at the beginning of your comment. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, will be made available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; faxogram (801) 524–5499; e-mail at: *kjacobson@uc.usbr.gov.*

Dated: September 13, 2002.

Darryl Beckmann,

Acting Regional Director.

[FR Doc. 02–25442 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0038

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR Part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

DATES: Comments on the proposed information collection must be received by December 6, 2002, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources—30 CFR Part 783.

OMB Control Number: 1029–0038.

Summary: Applicants for underground coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed underground coal mining activities.

Bureau Form Number: None.

Frequency of Collection: Once, at time of application submission.

Description of Respondents: Underground coal mining applicants and State regulatory authorities.

Total Annual Responses: 59

Total Annual Burden Hours: 25,088 hours.

Dated: September 30, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–25434 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0043, 1029–0111 and 1029–0112

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost for 30 CFR part 761, Areas designated by Act of Congress; 30 CFR part 772, Requirements for coal exploration; and 30 CFR part 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 6, 2002, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783 or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted three requests to OMB to renew its approval of the collections of information contained in: 30 CFR part 761, Areas designated by Act of Congress; 30 CFR part 772, Requirements for coal exploration; and 30 CFR part 800, Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0043 for 30 CFR 800, 1029–0111 for 30 CFR part 761, and 1029–0112 for 30 CFR part 772.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for these collections of information was published on June 25, 2002 (67 FR 42803). No comments were received. This notice provides the

public with an additional 30 days in which to comment on the following information collection activities:

Title: Areas designated by Act of Congress, 30 CFR part 761.

OMB Control Number: 1029–0111

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 761 to ensure that persons planning to conduct surface coal mining operations on the lands protected by section 522(e) of the Surface Mining Control and Reclamation Act of 1977 have the right to do so under one of the exemptions or waivers provided by this section of the Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for certain surface coal mine permits and State regulatory authorities.

Total Annual Responses: 262.

Total Annual Burden Hours: 1,864.

Title: Requirements for Coal exploration, 30 CFR part 772.

OMB Control Number: 1029–0112.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR part 772 to maintain knowledge of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR parts 772 and 815 and section 512 of SMCRA (30 U.S.C. 1262).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons planning to conduct coal exploration and State regulatory authorities.

Total Annual Responses: 905.

Total Annual Burden Hours: 8,510.

Title: Bond and Insurance requirements for surface coal mining and reclamation operations under regulatory programs, 30 CFR part 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implement section 509 of the Surface Mining Control and Reclamation Act of 1977, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with section 519 of the Act, liability insurance requirements pursuant to Section 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 14,167.

Total Annual Burden Hours: 166,114 hours.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

August 28, 2002.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 02–25435 Filed 10–4–02; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Att: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics (BLS).

Title: National Longitudinal Survey of Women.

OMB Number: 1220–0110.

Affected Public: Individuals or households.

Frequency: Biennially.

Estimated Time Per Response and Total Burden Hours:

Form	Number of respondents	Total annual responses	Estimated minutes/response	Total annual burden (Hours)
2003 NLSW Pretest	50	50	70	58
2003 NLSW Main Fielding	6,627	6,627	70	7,790
Re-interview	668	668	5	56

Form	Number of respondents	Total annual responses	Estimated minutes/response	Total annual burden (Hours)
Total	6,677	7,345		7,904

Note: The difference between the total number of respondents and the total number of responses reflects the fact that 668 respondents will be interviewed twice once in either the pretest or the main fielding and a second time in the quality-control re-interview. An additional 58 burden hours have been included for the main fielding to account for the possibility of having to interview the 50 women selected for the pre-test again in the main fielding in the unlikely event that the pre-test fails completely.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under Title 29 of the United States Code, Congress authorized the Bureau of Labor Statistics of the U.S. Department of Labor (Department) to collect labor statistics. The National Longitudinal Surveys (NLS) program is part of this effort. The data collected in the 2003 National Longitudinal Survey of Women (NLSW) will contribute to the knowledge about opportunities and services for younger women who desire to enter or re-enter the labor force. The Department will use this information to help understand and explain the employment activities, unemployment problems, and retirement decisions of women. The mature women currently are ages 66–80 and young women are ages 49–60. The 2003 NLSW is the only longitudinal survey designed to measure changes in the U.S. labor market for women born in years 1922–37 or 1943–53. No other source of data provides information on the extended time period covered by the NLSW, the wide variety of variables that it contains, and the characteristics of the sample. The 2003 NLSW will expand the existing socioeconomic data bank for women.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–25378 Filed 10–4–02; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

September 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or e-Mail *King-Darrin@dol. gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Stuart Shapiro, OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Quarterly Mine Employment and Coal Production Report.

OMB Number: 1219–0006.

Affected Public: Business or other for-profit.

Frequency: Quarterly.

Number of Respondents: 24,604.

Number of Annual Responses: 86,158.

Estimated Time Per Response: 30 minutes for hardcopy filings and 15 minutes for electronic filings.

Total Burden Hours: 41,155.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $27,236.

Description: The reporting and record keeping provisions in 30 CFR 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 30 CFR 50.30(a) requires mine operators and independent contractors working on mine property to report quarterly employment and coal production to MSHA on Form 7000–2. MSHA tabulates and analyzes the information from this form along with data from MSHA Form 7000–1, Mine Accident, Injury, and Illness Report (OMB No. 1219–0007), to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Employment and production data when correlated with accident, injury, and illness data provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing.

MSHA Form 7000–2 is also a source of national coal production data, allowing MSHA to analyze the relationship between production and health and safety. Coal production data are also used to determine the sizes of coal mines for assessment purposes.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires operators to report employee hours worked. Section 103(h) of the Mine Act requires operators to keep any records and make any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act.

Data collected through MSHA Form 7000–1 (OMB # 1219–0007) and MSHA Form 7000–2 enable MSHA to publish

timely quarterly and annual statistics, reflecting current safety and health conditions in the mining industry. The data gathered from this collection provides MSHA with the figures upon which to base its incidence rate calculations and trend analyses. These data are used not only by MSHA, but also by other Federal and State agencies, health and safety researchers, and the mining community to assist in measuring and comparing the results of health and safety efforts both in the United States and internationally.

Coal production data are used in various analyses that range from a comparative nature to complex modeling—such as the Cost of Injury Model developed through research. Additionally, this information impacts the evaluation and review of MSHA's regulations, the development of new safety and health standards, and the evaluation of MSHA's programs.

Quarterly employment and worktime information provide control figures on which MSHA can base its incidence rate calculations and trend analyses. The employment data are used to normalize injury experience so that mines of different sizes can be compared and also to compare experience for different time periods.

MSHA tabulates and analyzes the information from MSHA Form 7000–2, along with that from MSHA Form 7000–1, Mine Accident, Injury, and Illness Report, to compute incidence and severity rates for various injury types.

MSHA uses this information to direct its inspection and assistance activities to those mines, industry segments, and geographical areas which the current data demonstrate as having particular problems. Injury rates must be computed at least quarterly for MSHA to target its enforcement and assistance resources. Less frequent data collection would neither be timely nor statistically valid for this purpose.

Agency: Mine Safety and Heath Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Mine Accident, Injury and Illness Report.

OMB Number: 1219–0007.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Number of Respondents: 4,174.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Immediate Notification of MSHA—30 CFR 50.10:			
Fatal Accidents	72	0.50	36
Other Accidents	1,813	0.50	907
Investigation of Accidents and Occupational Injuries—30 CFR 50.11(b):			
Fatal Accidents	72	80.00	5,760
Nonfatal Accidents	78	16.00	1,248
Other Occurrences	15,592	1.00	15,592
Separate Investigation Reports—30 CFR 50.11(b):			
Fatal Accidents	56	4.00	224
Other Occurrences	14,468	1.00	14,468
Mine Accident, Injury, and Illness Reports—30 CFR 50.20:			
Initial Reports	17,555	0.50	8,778
Follow-up Reports	8,518	0.33	2,811
Total	58,224	.....	49,823

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $12,914.

Description: The reporting and recordkeeping provisions in 30 CFR 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

Section 50.10 requires mine operators and mining contractors to immediately notify MSHA in the event of an accident. This immediate notification is critical to MSHA's timely investigation and assessment of the probable cause of the accident.

Section 50.11 requires that the operator or contractor investigate each accident and occupational injury and prepare a report. The operator or contractor may not use MSHA Form 7000–1 as a report, unless the mine employs fewer than 20 miners and the occurrence involves an occupational injury not related to an accident.

Section 50.20(a) requires mine operators and mining contractors to report each accident, injury, or illness to MSHA on Form 7000–1 within 10 working days after an accident or injury has occurred or an occupational illness has been diagnosed. The use of MSHA Form 7000–1 provides for uniform information gathering across the mining industry.

MSHA tabulates and analyzes the information from MSHA Form 7000–1, along with data from MSHA Form 7000–2, Quarterly Mine Employment and Coal Production Report (OMB No. 1219–0006), to compute incidence and severity rates for various injury types. These rates are used to analyze trends and to assess the degree of success of the health and safety efforts of MSHA and the mining industry.

Accident, injury, and illness data when correlated with employment and production data provide information that allows MSHA to improve its safety and health enforcement programs, focus its education and training efforts, and establish priorities for its technical assistance activities in mine safety and health. Maintaining a current database allows MSHA to identify and direct increased attention to those mines, industry segments, and geographical areas where hazardous trends are developing. This could not be done effectively utilizing historical data. The information collected under Part 50 is the most comprehensive and reliable occupational data available concerning the mining industry.

Section 103(d) of the Federal Mine Safety and Health Act of 1977 (Mine Act) mandates that each accident be investigated by the operator to determine the cause and means of preventing a recurrence. Records of such accidents and investigations shall be kept and made available to the Secretary or his authorized representative and the appropriate State agency. Section 103(h) requires operators to keep any records and make

any reports that are reasonably necessary for MSHA to perform its duties under the Mine Act. Section 103(j) of the Mine Act requires operators to notify MSHA of the occurrence of an accident and to take appropriate measures to preserve any evidence which would assist in the investigation into the cause or causes of the accident.

Data collected through MSHA Form 7000–1 and MSHA Form 7000–2 enable MSHA to publish timely quarterly and annual statistics, reflecting current safety and health conditions in the mining industry. These data are used not only by MSHA, but also by other Federal and State agencies, health and safety researchers, and the mining community to assist in measuring and comparing the results of health and safety efforts both in the United States and internationally.

MSHA tabulates and analyzes information from MSHA Form 7000–1, along with that from MSHA Form 7000–2, Quarterly Mine Employment and Coal Production Report, to derive quarterly evaluations of normalized injury and illness experience at the nation's mines. These data allow MSHA to detect accident, injury, and illness trends ascribable to specific mine sites, types of mining, work locations, or tasks.

MSHA uses this information to target its inspection and assistance activities toward those mines, industry segments, and geographical areas which the current data demonstrate as having particular problems. Injury rates must be computed at least quarterly for MSHA to target its enforcement and assistance resources. Less frequent data collection would neither be timely nor statistically valid for this purpose.

The mining industry also uses this quarterly injury incidence data in its efforts to reduce injuries and illnesses. MSHA's compilations are the only source of information which permits a particular mining operation to compare its record with that of similar mines.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 02–25379 Filed 10–4–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collection; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Local Area Unemployment Statistics (LAUS) Program Manual.

OMB Number: 1220–0017.

Affected Public: State, Local or Tribal Government.

Frequency: Monthly and Annually.

Estimated Time Per Response and Total Burden Hours:

Form	Number of respondents	Annual frequency	Total annual responses	Estimated hours/response	Total annual burden (Hours)
LAUS 3040	52	13 months	86,650	1.6	138,640
LAUS 8	52	11 months	572	1.6	915
LAUS 15	52	0.5 months	26	2	52
LAUS 16	52	1 yearly	52	1.4	73
Totals			87,300		139,680

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operation/maintaining systems or purchasing services: $0.

Description: The Bureau of Labor Statistics has been charged by Congress [Congressional Act of July 7, 1930 (29 USC Chapters 1 and 21)] with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked by area and industry. The process for developing residency based employment and unemployment estimates is a cooperative Federal-State program that uses employment and unemployment inputs available in State agencies. The estimates are used in economic analysis by public agencies and private industry, and for State and area allocations and eligibility determinations according to legal and administrative requirements. The Manual provides the theoretic basis and essential technical instructions and guidance that States require to prepare State and area unemployment estimates, while the reports are integral parts of the LAUS program that ensure and/or measure the timeliness, quality, consistency, and adherence to program directives and related research. Implementation of policy and legislative prerogatives could not be accomplished as now written without collection of the data.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–25380 Filed 10–4–02; 8:45 am]

BILLING CODE 4510–24–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 2 (IP2) located in Westchester County, New York.

The proposed amendment would revise Technical Specification (TS) 3.10.4, ''Rod Insertion Limits,'' TS 3.10.5, ''Rod Misalignment Limitations,'' and TS 3.10.6, ''Inoperable Rod Position Indicator Channels.'' The proposed amendment would remove the cycle-specific allowances on (1) rod insertion limits during individual rod position indicator channel calibrations and (2) rod position indicator channel accuracy for operation at or below 50 percent power. The proposed amendment also would revise the control rod indicated misalignment limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability [* * *] or consequences of an accident previously evaluated.

The magnitude of control rod misalignment, allowed by the proposed changes to TS Section 3.10.5, is not a contributor to the mechanistic cause of an accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. The functions of the Control Rod Drive System or the Analog Rod Position Indicator System are not being altered by the proposed changes. Therefore, the proposed increase in control rod misalignment will not result in an increase in the probability of a previously evaluated accident.

The bounding design limitations of these systems will continue to be met and the integrity of the fuel cladding and the reactor coolant system pressure boundary will not be challenged by the proposed changes. The initial conditions and input assumptions employed in the calculation of the offsite radiological doses will remain valid. Therefore, the consequences of a previously evaluated accident will not be increased.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The pertinent licensing basis acceptance criteria will continue to be met and the margin of safety defined in the TS Bases will not be reduced in the IP2 licensing basis accident analyses. The magnitude of the allowed control rod misalignment is not a contributor to the mechanistic cause of any known accident and the functions of the Control Rod Drive System or the Analog Rod Position Indicator System are not being altered. Therefore, a new or different kind of an accident than any previously evaluated, will not be created.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

Based on the changes to safety analyses input parameter values, the pertinent licensing basis acceptance criteria will continue to be met and the margin of safety, defined in the TS Bases, will not be reduced in the IP2 licensing basis accident analyses. Therefore, the proposed change will not involve a reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 6, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1]

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to [insert attorney name and address], attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated [date], which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 1st day of October 2002.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25386 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237, 50–249, 50–254, and 50–265]

Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3, Quad Cities Nuclear Power Station, Units 1 and 2; Exemption

1.0 Background

The Exelon Generation Company, LLC (the licensee) is the holder of Facility Operating License Nos. DPR–19 and DPR–25, which authorize operation of the Dresden Nuclear Power Station, Units 2 and 3 (Dresden), and Facility Operating License Nos. DPR–29 and DPR–30, which authorize operation of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The Dresden facility consists of two boiling-water reactors located in Grundy County, Illinois, and the Quad Cities facility consists of two boiling-water reactors located in Rock Island County, Illinois.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.71, paragraph (e)(4) requires that subsequent revisions to the Updated Final Safety Analysis Report (UFSAR) be submitted periodically to the NRC provided that the interval between successive updates does not exceed 24 months. The Dresden and Quad Cities UFSAR revisions are currently submitted on a 24-month cycle. The next scheduled date for submittal of the revised UFSAR for Dresden is June 30, 2003, and for Quad Cities is October 20, 2003. The licensee proposes to submit revised UFSARs along with Operating License Renewal Applications (LRAs) for Dresden and Quad Cities in January 2003, and to resume the established schedule for submittal of UFSAR revisions for Dresden on June 30, 2005, and for Quad Cities on October 20, 2005. An exemption is required because 10 CFR 50.71(e)(4) requires that subsequent revisions to the UFSAR be submitted periodically to the NRC provided that the interval between successive updates does not exceed 24 months.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These circumstances include the special circumstances that compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

The underlying purpose of the regulation is to ensure the UFSAR contains the latest information and analyses submitted to the NRC by the licensee or prepared by the licensee pursuant to NRC requirement since the submittal of the original final safety analysis report, or, as appropriate, since the last update to the final safety analysis report submitted under 10 CFR 50.71(e).

The staff examined the licensee's rationale to support the exemption request and concluded that granting it would meet the underlying purpose of 10 CFR part 50. Consistent with previous applicants and in order to facilitate the review of LRAs for Dresden and Quad Cities, the licensee plans to submit revised copies of each station's UFSAR along with the LRAs in January 2003. Submitting the revised UFSARs with the LRAs in January 2003 will result in submittal of the revisions for Dresden and Quad Cities earlier than their normal due dates. Revised UFSARs are necessary to facilitate NRC review of the LRAs due to numerous changes approved for the stations since the last revisions, including modifications due to extended power uprates, fuel type changes, and numerous other license amendments. A revised UFSAR is an integral element of the technical resources used by the NRC for the review of an LRA. The licensee maintains the UFSARs current with controlled and approved procedures which track and account for all changes for subsequent incorporation. The licensee UFSAR control process ensures that the UFSARs are maintained as required by NRC regulations. The proposed action only alters the schedule for submittal of the UFSAR revisions on a one-time basis. The requested exemption will only provide temporary relief from the applicable regulation and does not jeopardize the health and safety of the public. The licensee plans to resume the established schedule for submittal of the UFSAR revisions in 2005 for both stations. Also, the licensee plans to submit all other documents incorporated by reference in the UFSARs on the regularly scheduled dates in 2003.

10 CFR 50.12(a)(2)(iii) requires that special circumstances are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. If the exemption is not granted, the licensee will have to prepare multiple UFSAR revision submittals within a ten-month period. Resetting the schedule for UFSAR update submittals to every other year in January would also result in undue hardship due to the scheduling of resources towards the end and beginning of the year. The staff finds that the licensee merits the required special circumstances under 10 CFR 50.12(a)(2)(iii).

Therefore, the staff concludes that pursuant to 10 CFR 50.12(a)(2), a one-time exemption is authorized from the requirements of 10 CFR 50.71(e)(4) to allow extension of the submittal of revisions to the Dresden and Quad Cities UFSARs until June 30, 2005, and October 20, 2005, respectively.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon Generation Company, LLC a one-time exemption for Dresden and Quad Cities from the requirement of 10 CFR 50.71(e)(4) that subsequent revisions to the UFSAR be submitted periodically to the NRC provided that the interval between successive updates does not exceed 24 months. The exemption is granted based upon the licensee's intention to submit updated UFSARs along with LRAs in January 2003, as stated in the letter from K. Jury (licensee) to NRC Document Control Desk, ''Request for Schedular Exemption for Biennial Submittal of Revised Updated Safety Analysis Reports (UFSARs) to Support Operating License Renewal Application,'' dated August 9, 2002.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 59580).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of October 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25387 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Nine Mile Point Nuclear Station, LLC, Nine Mile Point Nuclear Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) Section 54.17(c) for Facility Operating License No. NPF–69, issued to Nine Mile Point Nuclear Station, LLC (NMPNS), for operation of Nine Mile Point Nuclear Station, Unit No. 2 (NMP2) located in Oswego County, New York. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant a schedular exemption from the provision of 10 CFR 54.17(c), which stipulates that a licensee may not apply for a renewed operating license earlier than 20 years before the current license expires. The exemption would allow NMPNS to submit a renewal application for NMP2 earlier than 20 years before expiration of its operating license.

The Need for the Proposed Action

The proposed action would allow NMPNS to submit one application for renewal of the operating licenses of both nuclear units located at the site, with the goal of attaining efficiencies for preparation and review of the application.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption will not have a significant environmental impact. The proposed schedular exemption pertains solely to the future submission of an application to renew the NMP2 operating license. It causes no changes to the current design or operation of NMP2, and imparts no prejudice in the future review of the application for license renewal.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for NMP2, dated June 1973.

Agencies and Persons Consulted

On September 27, 2002, the NRC staff consulted with the New York State official, Mr. John P. Spath of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 4, 2002, as supplemented on June 27, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of October 2002.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–25388 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Key Issues Related to the Licensing of Future Non-Light Water Reactors; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent; correction.

SUMMARY: This document corrects a document appearing in the **Federal Register** on September 26, 2002 (67 FR 60702), that informs the public that the NRC has underway preapplication reviews of advanced reactor designs. This action is necessary to correct an erroneous address for the meeting location.

ADDRESSES: The workshop will be held at the Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Farouk Eltawila, Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Mail Stop T–10 F32, telephone (301) 415–7499; Internet: *FXE@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On page 60702, the **ADDRESSES** heading is corrected to read as set forth above.

Dated at Rockville, Maryland, this 2nd day of October, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–25389 Filed 10–4–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25760; 812–12680]

Oppenheimer Integrity Funds, et al.; Notice of Application

September 30, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Oppenheimer Integrity Funds; Oppenheimer California Municipal Fund; Oppenheimer Capital Appreciation Fund; Oppenheimer Capital Income Fund; Oppenheimer Capital Preservation Fund; Oppenhimer Cash Reserves; Oppenheimer Champion Income Fund; Oppenheimer Concentrated Growth Fund; Bond Fund Series; Oppenheimer Discovery Fund; Oppenheimer Developing Markets Fund; Oppenheimer Emerging Growth Fund; Oppenheimer Emerging Technologies Fund; Oppenheimer Enterprise Fund; Oppenheimer Europe Fund; Oppenheimer Multi-State Municipal Trust; Oppenheimer Global Fund; Oppenheimer Global Growth & Income Fund; Oppenheimer Gold & Special Minerals Fund; Oppenheimer Growth Fund; Oppenheimer High Yield Fund; Oppenheimer Municipal Fund; Oppenheimer International Bond Fund; Oppenheimer International Growth Fund; Oppenheimer International Small Company Fund; Oppenheimer Limited-Term Government Fund; Oppenheimer Main Street Funds, Inc.; Oppenheimer Main Street Opportunity Fund; Oppenheimer Main Street Small Cap Fund; Oppenheimer MidCap Fund; Oppenheimer Special Value Fund; Oppenheimer Money Market Fund, Inc.; Oppenheimer Multiple Strategies Fund; Oppenheimer Municipal Bond Fund; Oppenheimer New York Municipal Fund; Oppenheimer Quest For Value Funds; Oppenheimer Quest Value Fund, Inc.; Oppenheimer Quest Global Value Fund, Inc.; Oppenheimer Quest Capital Value Fund, Inc.; Oppenheimer Real Asset Fund; Oppenheimer Real Estate Fund; Oppenheimer Select Managers; Oppenheimer Series Fund, Inc.; Oppenheimer Strategic Income Fund; Oppenheimer Total Return Fund, Inc.; Oppenheimer Trinity Core Fund; Oppenheimer Trinity Large Cap Growth Fund; Oppenheimer Trinity Value Fund; Oppenheimer U.S. Government Trust; Rochester Fund Municipals; Rochester Portfolio Series; Oppenheimer Variable Account Funds; Panorama Series Fund, Inc., Centennial America Fund, L.P. (each, an ''Oppenheimer Fund''); Centennial California Tax Exempt Trust; Centennial Government Trust; Centennial Money Market Trust; Centennial New York Tax Exempt Trust; Centennial Tax Exempt Trust (each, a ''Centennial Fund,'' and, together with the Oppenheimer Funds, the ''Companies''); OppenheimerFunds, Inc. (''OFI'') and Centennial Asset Management, Corp (''CAMC'').

FILING DATES: The application was filed on November 14, 2001, and amended on May 29, 2002 and August 13, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2002 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Dina C. Lee, Esq., OppenheimerFunds, Inc., 498 Seventh Avenue, 14th Floor, New York, NY 10018.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681 or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Companies are organized as Massachusetts business trusts, Maryland corporations, or, in the case of Centennial America Fund, L.P., a limited partnership under the laws of the state of Delaware, and are registered under the Act as open-end management investment companies.[1] The business and affairs of each Company are managed under the directions of the board of trustees or directors or, in the case of Centennial America Fund, L.P., the managing general partners of the relevant Company (''Board'').

2. Each of OFI and CAMC, a wholly owned subsidiary of OFI, is registered as an investment adviser under the Investment Advisers Act of 1940. Each Oppenheimer Fund has entered into an investment advisory agreement with OFI, and each Centennial Fund has entered into an investment advisory agreement with CAMC. OFI also provides the Funds with certain administrative services.

3. Each Fund may deposit uninvested daily cash balances into a joint account administered by OFI (''Joint Account''). Each Fund may lend money to banks or other entities by entering into repurchase agreements either directly or through the Joint Account. Other Funds may need to borrow money from the same or similar banks for temporary purposes to satisfy redemption requests, to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash

[1] Applicants also request for any other open-end investment company registered under the Act for which OFI or any person controlling, controlled by or under common control with OFI acts or may act in the future as investment adviser (included in the term ''Companies''). All Companies that presently intend to rely on the requested relief are named as applicants. Any other Companies that subsequently rely on the requested order will comply with the terms and conditions in the application. A Company, if it has no series, and each series of a Company, are referred to as a ''Fund.''

payment for a security sold by a Fund has been delayed, or for other temporary purposes. Currently, the Funds have credit arrangements with their custodians (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs. Many of the Funds also have entered into loan agreements with banks to provide a line of credit for temporary funding.

4. If the Funds were to borrow money from their custodians under their current arrangements or under other credit facility arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be higher than the rate that would be earned by other non-borrowing Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit. Other bank loan arrangements, such as committed lines of credit, would require the Funds to pay commitment fees, attorney fees and related costs in addition to the interest rate to be paid by the borrowing Fund.

5. Applicants request an order that would permit the Funds to enter into master interfund lending agreements (''Interfund Lending Agreements'') under which the Funds would lend money and borrow money for temporary purposes directly to and from each other (an ''Interfund Loan''). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to continue committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodians.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests, which normally are effected immediately, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond the seller's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While bank borrowings could generally supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility, a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charged to the Funds on any loan under the credit facility (the ''Interfund Loan Rate'') would be the average of the Joint Account Repo Rate and the Bank Loan Rate, both as defined below. The Joint Account Repo Rate would be the current overnight repurchase agreement rate available through the Joint Account. The Bank Loan Rate would be calculated by OFI each day that a Fund borrows or lends, according to a formula established by each Fund's Board to approximate the lowest interest rate at which bank loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Board periodically would review the continuing appropriateness of using the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

10. The credit facility would be administered by OFI's fund accounting department (collectively, the ''Cash Management Team''). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. OFI on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers. There typically will be far more available uninvested cash each day than borrowing demand. Therefore, after allocating cash for Interfund Loans, OFI will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the relevant Funds. The money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believed to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees/directors who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees/Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. OFI would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and

limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the interest rates charged.

13. OFI will administer the program under its (or CAMC's) existing investment advisory agreement with each Fund, and OFI would receive no additional compensation from its administration of the proposed credit facility. OFI or companies affiliated with it may collect standard pricing, record keeping, accounting and bookkeeping fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable loan transactions.

14. Each Fund's participation in the proposed credit facility is either currently consistent with its organizational documents and its investment policies and limitations, or such documents, policies and limitations will be amended or modified to be made consistent with the Fund's participation. The prospectus of each Fund discloses the extent to which the Fund may borrow money for temporary purposes and lend securities and other assets and the extent to which the Fund is able to mortgage or pledge securities to secure permitted borrowings. If the requested relief is granted, the statement of additional information (''SAI'') of each Fund participating in the interfund lending arrangements will disclose the existence of such arrangements. Each Fund that desires to engage in interfund lending arrangements, and that has existing fundamental policies that would restrict participation in such arrangements, will obtain shareholder approval to amend such policies to the extent necessary to permit it to participate in such arrangements on the conditions set forth in the application.

15. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Applicants state that the Funds may be under common control by virtue of having OFI or CAMC, which is a wholly owned subsidiary of OFI, as their common investment adviser.

2. Section 6(c) provides that an exemptive order may be granted where an 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. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) were intended to prevent a person with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) OFI would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that OFI would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided that, immediately after the borrowing, there is an asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to

implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting the relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any transaction in which the company is a joint or a joint and several participants unless permitted by Commission order upon application. Rule 17d–1(b) of the Act provides that in passing upon applications for exemptive relief, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Joint Account Repo Rate and the Bank Loan Rate.

2. On each business day, OFI will compare the Bank Loan Rate with the Joint Account Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Joint Account Repo Rate and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, the event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be 10% or greater of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after such borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to equal or exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans equal or exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all of its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to less than 10% of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings equals or exceeds 10% is repaid or the Fund's total outstanding borrowings cease to equal or exceed 10% of its total assets, the Fund will mark the value of collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the Interfund Lending Agreements if the loan would cause its aggregate outstanding loans through the Interfund Lending Agreements to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund will not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demands through the credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. OFI will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the relevant Funds.

13. OFI will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the respective Board concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit thereunder.

14. The Board of each Fund, including a majority of the Independent Trustees/Directors, will (a) review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans, approve any modifications thereto, and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, OFI will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions, setting forth a description of the terms of the transactions, including the amount, the maturity and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. OFI will prepare and submit to the Boards for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all the Funds are treated fairly. After the commencement of the operations of the credit facility, OFI will report on the operations of the credit facility at the respective Board's quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates OFI's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report will be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Joint Account Repo Rate but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with the procedures established by the Boards; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless it has fully disclosed in its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25356 Filed 10–4–02; 8:45 am]

BILLING CODE 8010–01–P

[2] If a dispute involves Funds with separate Boards, the respective Boards of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46577; File No. S7–12–02]

Final Data Quality Guidelines

AGENCY: Securities and Exchange Commission.

ACTION: Notice of availability of final guidelines.

SUMMARY: The Securities and Exchange Commission has posted on its Web site at *http://www.sec.gov* its final data quality assurance guidelines. The guidelines describe the Commission's procedures for ensuring and maximizing the quality of information before it is disseminated to the public, and the procedures by which an affected person may obtain correction, where appropriate, of disseminated information that does not comply with the guidelines.

FOR FURTHER INFORMATION CONTACT: David R. Fredrickson, Assistant General Counsel, Office of General Counsel, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0606, (202) 942–0890.

Dated: October 1, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25362 Filed 10–4–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46572; File No. SR–CBOE–2002–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing To Extend the Rapid Opening System Pilot Program

September 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to extend the Rapid Opening System (''ROS'') pilot program until March 31, 2003 or such time as the Commission has approved ROS on a permanent basis.[3] The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

Rapid Opening System

Rule 6.2A

(a)–(c) No change.

(d) Pilot Program.

This Rule (and the sentences in Rule 6.2 and Rule 6.45 referring to this Rule) will be in effect until [September 30, 2002] *March 31, 2003* on a pilot basis.

Interpretation and Policies

.01–.02 Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 9, 1999, the Commission approved, on a pilot basis, the implementation of the ROS.[4] ROS is a system developed by CBOE to open an entire options class, all series, as a single event, based on a single underlying value. The ROS pilot program is due to expire on September 30, 2002.[5] The Exchange proposes to extend the ROS pilot until March 31, 2003 or such time as the Commission has approved ROS on a permanent basis.

The Exchange recently submitted a proposed rule filing to the Commission proposing permanent approval of ROS as well as an extension of the ROS pilot.[6] This proposed rule change replaces and supersedes that portion of SR–CBOE–2002–55 that proposes an extension of the ROS pilot. CBOE proposes an extension of the ROS pilot so that the pilot may continue to operate while the Commission considers the Exchange's request for permanent approval.[7] CBOE believes that ROS has operated successfully over the past three years, and on that basis, the Exchange believes an extension of the pilot is warranted.

2. Statutory Basis

The CBOE believes that ROS has improved market efficiency for all market participants by successfully facilitating expedited openings of options classes on the Exchange during the pilot period. Therefore, CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 [11] thereunder because the Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b–4(f)(6)(iii) of the Act,[12] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission accelerate the operative

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The request to permanently approve ROS is being considered separately under SR–CBOE–2002–55. Telephone conversation between Jamie Galvan, Attorney, CBOE, and Christopher Solgan, Attorney, Division of Market Regulation, Commission, on September 24, 2002.

[4] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999) (approving SR–CBOE–98–48). ROS is governed by CBOE Rule 6.2A.

[5] The Commission has extended the ROS pilot program three times. *See* Securities Exchange Act Release Nos. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000) (extending the pilot until September 30, 2000), 43395 (September 29, 2000), 65 FR 60706 (October 12, 2000) (extending the pilot until September 30, 2001), and 44891 (October 1, 2001), 66 FR 51483 (October 9, 2001) (extending the pilot until September 30, 2002).

[6] *See* SR–CBOE–2002–55.

[7] The Pacific Exchange, Inc.'s Automatic Opening Rotations pilot program has recently been extended until September 30, 2003. *See* Securities Exchange Act Release No. 46055 (June 10, 2002), 67 FR 41288 (June 17, 2002).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

date of the proposal to September 30, 2002 so that the ROS pilot program may continue without interruption after it would have otherwise expired on September 30, 2002. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to accelerate the operative date of the proposal to September 30, 2002.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–58 and should be submitted by October 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25363 Filed 10–4–02; 8:45 am]

BILLING CODE 8010–01–P

[13] For purposes only of accelerating the operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.000 (5) percent for the October-December quarter of FY 2003.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 02–25357 Filed 10–4–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4146]

Office of the Procurement Executive; 60-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR); OMB Control Number 1405–0050

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Administration, Office of the Procurement Executive.

Title of Information Collection: Department of State Acquisition Regulation (DOSAR).

Frequency: On occasion.

Form Number: N/A.

Respondents: Any business, other for-profit, individual, not-for-profit, or household organizations wishing to receive Department of State contracts.

Estimated Number of Respondents: 2,790.

Average Hours Per Response: Varies.

Total Estimated Burden: 225,503 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Gladys Gines, Procurement Analyst, Office of the Procurement Executive, U.S. Department of State, Washington, DC 20520, who may be reached on (703) 516–1691.

Dated: September 11, 2002.

Lloyd W. Pratsch,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. 02–25444 Filed 10–4–02; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Transportation Labor-Management Board; Establishment and Notice of Meeting

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Federal Advisory Committee Establishment and notice of meeting.

SUMMARY: Following consultation with the General Services Administration, the U.S. Department of Transportation (DOT) announces the establishment of the Transportation Labor-Management Board (Board) and the Board's first meeting. Notice of the establishment of the Board and the meeting is required under the Federal Advisory Committee Act.

Time and Place: The Board will meet on Tuesday, October 22, 2002, at 9 a.m., at the U.S. Department of Transportation, Nassif Building, room 4438/40, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 4th floor.

Type of Meeting: The meeting is open to the public. Please note that visitors without a government identification badge should enter the Nassif Building at the Southwest lobby, for clearance at the Visitor's Desk. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of Contact: Stephen Gomez, U.S. Department of Transportation, Office of the Secretary, Corporate Human Resource Policy Division, M–13, Nassif Building, 400 Seventh Street, SW., room 7411, Washington, DC 20590, (202) 366–9455.

SUPPLEMENTARY INFORMATION: The purpose of the Transportation Labor-

Management Board is to foster a cooperative and constructive working relationship between employees, labor representatives, and managers within DOT by providing a forum for discussions between management and the unions on significant departmental issues. The Board will serve as an advisory committee providing information, advice and recommendations on cross-cutting departmental issues to DOT through the Assistant Secretary for Administration, and shall exist for two years from the date of the Charter. The Board will be comprised of seven management representatives and seven union representatives, appointed by the DOT's operating administrations and unions. The Secretary of Transportation or his/her designee will appoint a Chairperson from among the Board's membership.

The purpose of the October 22nd meeting is to establish a collaborative working relationship between Board members, determine the Board's operating principles, and address approaches for achieving the objectives identified in the Board's Charter.

Public Participation

We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Stephen Gomez at the address shown above. Comments should be received by October 18, 2002 in order to be considered at the October 22nd meeting.

Issued in Washington, DC, on September 30, 2002.

For the U.S. Department of Transportation.

Linda Moody,

Associate Director, Human Resource Leadership Division.

[FR Doc. 02–25411 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to amend a system of records.

SUMMARY: DOT intends to amend a system of record under the Privacy Act of 1974.

EFFECTIVE DATE: November 18, 2002. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax), Yvonne.Coates@ost.dot.gov (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the above mentioned address.

DOT/ALL 9

SYSTEM NAME:

Identification Media Record Systems.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

The system is located in the:

a. Office of Security and Administrative Management, M–40, 400 7th Street, SW., Washington, DC 20590; (for Office of the Secretary of Transportation and all DOT Agencies other than those listed below).

b. Commandant, United States Coast Guard Headquarters, G-O, Washington, DC 20593 and District and Area Offices.

c. Federal Aviation Administration, Office of Security and Investigations, 800 Independence Avenue, SW., Washington, DC 20591; and all FAA Regional Offices and Centers.

d. Federal Highway Administration, Operations and Services Divisions, 400 7th Street, SW., Washington, DC 20590, and all FHWA Regional Offices.

e. Transportation Security Administration, 400 7th Street, SW., Washington, DC 20590, and Federal Security Directors at various airports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

Present and former employees, contractor employees, consultants, and other individuals or personnel that require access to DOT facilities, information, resources or information-based systems in any element of DOT.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, photographs, receipts for DOT identification and verification media and official credentials, temporary building passes, security badges, security clearance level and type, date of clearance, clearance basis, entry on duty information, current duty assignment information, routing symbols, limited relevant portions of the background investigation date of background investigation, investigating agency and follow-up investigation data, date of birth, social security number, position title and position sensitivity, assignment to sensitive duty positions, facility access, gender, designations, automated information systems access designations, records of access authorizations granted, biometric data (fingerprint or other biometric data as determined by current standards), PKI certificates and encryption information, digital signature codes and verification data, personal information number (pin)/identification and verification media password, or identification record number and expiration date, applications for other identification needed for official duties, and other fields as dictated by the Governmental SmartCard Interoperability Standard.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322; 49 U.S.C. 114(d); 49 U.S.C. 106(f)(2); 49 U.S.C. 40122.

PURPOSE(S):

- To control access to DOT facilities, information or information-based systems by authenticating the identity of each person using the system; the system will not be used to monitor or track individuals or their usage habits.
- To provide a ready concentration of employee personal data to facilitate issuance, accountability, and recovery of required identification media issued to employees, contractor employees, consultants, and other individuals or personnel who require access to DOT facilities, information or information-based systems in the performance of their duties.
- To provide for universal and positive verification and control for DOT employees, contractor employees, consultants, and other individuals or personnel needed to perform their official duties.
- To control and account for DOT identification and verification media, credentials, and security badges issued to DOT employees, former employees, contractors, and other individuals who require access to DOT facilities and information or information-based systems in the performance of their DOT or other official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- Records may be disclosed to contractors for the limited purpose of assisting the Department or one of its elements in issuing, controlling and accounting for DOT identification and

verification media, credentials and security badges and maintaining associated databases.

• Records may be disclosed to Departmental contractors concerning their own current and former employees to facilitate the control and accountability of DOT identification and verification media, credential and security badges issued to contract employees.

• See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in an electronic database and may be on computer disks/chips, magnetic tape, and paper forms in file folders. The items of information set forth in the category of records section may be contained on an electronic computer chip or other media imbedded on the identification and verification medium of each employee, contractor, or other individual to whom the identification and verification media is issued.

RETRIEVABILITY:

Retrieval from the system is by name, social security number, date of birth, security clearance level, date of investigation, type of investigation, identification and verification media or record number, digital certificates, duty position location (POD), identification and verification media expiration or issue date, other fields as included in the Governmental SmartCard Interoperability Standard, or other category of records and can be accessed only by authorized individuals.

SAFEGUARDS:

Computers provide privacy and access limitations to records by requiring a user name and password match or equivalent safeguards such as biometrics and public key infrastructure (PKI) technology. Access to decentralized segments is similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords or equivalent technology. Data are manually and/or electronically stored in a locked room with limited access.

The protection of the data/information and of the identification and verification media complies with NIST Standards; at no time will any data/information be placed on the media in a manner less secure than its original source.

RETENTION AND DISPOSAL:

Hard copy of information including applications, photographs and identification media is destroyed immediately upon termination of employment and/or expiration of surrendered ID media. Inactive electronic records pertaining to applications, photographs, and identification media is removed from the video ID system monthly. The following schedules apply: General Records Schedule (GRS) 11, item 4, Space and Maintenance Records; and GRS 20, item 3a, Electronic Records.

SYSTEM MANAGER(S) AND ADDRESS:

a. Office of Security and Administrative Management, M–40, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (for OST and all DOT agencies other than those listed below).

b. Commandant, G-O United States Coast Guard, Washington, DC 20593.

c. Director of Security and Investigations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

d. Chief, Operations and Services Division, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as System Manager. Correspondence contesting records must include the full name and social security number of the individual concerned and documentation justifying the claim.

RECORD ACCESS PROCEDURES:

Same as Notification procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification procedure.

RECORD SOURCE CATEGORIES:

Individuals about whom the record is maintained, automated personnel systems maintained by DOT or any of its elements, and background and clearance investigation systems of records maintained by the DOT or any of its elements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 30, 2002.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 02–25412 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373.

DATES: Comments must be submitted on or before November 6, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Operating Requirements: Domestic, Flag, and Supplemental Operations—Part 121.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0008.

Forms(s): FAA Form 8070–1.

Affected Public: A total of 139 air operators.

Abstract: 14 CFR part 121 prescribes the requirements governing air carrier operators. The information collected is used to determine air operators' compliance with the minimum safety standards set out in the regulation and to determine the applicants' eligibility for air operations certification. The respondents include private businesses.

Estimated Annual Burden Hours: An estimated 1,273,247 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the

burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on September 30, 2002.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 02–25472 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare Draft and Final Environmental Impact Statements

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

The Northwest Mountain Region, Airports Division, Federal Aviation Administration, acting as lead agency, intends to prepare Draft and Final Environmental Impact Statements (EIS) for the construction of a replacement airport at St. George, Utah.

Background

On January 30, 2001, the Federal Aviation Administration (FAA) issued a Record of Decision/Finding of No Significant Impact document for the construction of a replacement airport at St. George, Utah. On December 22, 2001, the Grand Canyon Trust filed suit against the FAA in the U.S. Circuit Court of Appeals for the District of Columbia Circuit. On May 24, 2002, the court issued it's decision on the issues. In summary, the court found that ''the FAA must evaluate the cumulative impact of noise pollution on the Park as a result of construction of the proposed replacement airport in light of air traffic near and over the Park, for whatever airport, air tours near or in the Park, and the acoustical data collected by the NPS in the Park in 1995 and 1998 mentioned in comments on the draft Environmental Assessment (EA).'' The court remanded the case [to the FAA] ''because the record is insufficient for the court to determine whether an EIS is required''.

The purpose of the Draft and Final EIS's will be to address the court's issues and any other environmental issues that have changed since issuance of the final environmental assessment in January of 2001.

Proposed Action and Alternatives

The proposed action is the construction of a replacement airport at St. George, Utah. Alternatives to be evaluated include:

a. No-Build (continue using the existing airport as is).

b. Build a replacement airport at the preferred site (which is a combination of alternatives sites 1 and 1A), and

c. Alternative sites 1, 1A, and 2 as described on pages 32–40 of the final EA.

Scoping Process

The proposed action was the subject of a Final Environmental Assessment (FEA) report prepared in January 2001. Persons wishing to review the FEA in order to better understand the proposed action or provide comments regarding environmental concerns may review the FEA at the following locations:

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, CO 80249–6361.

City of St. George, Public Works Office, 175 East 200 North, St. George, UT 84770.

Washington County Libary, St. George Branch, 50 S. Main, St. George, Utah.

In order to insure that all significant issues related to the proposed action are identified and given consideration, letters containing environmental concerns must be received by Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056 by November 14, 2002.

Release of Draft EIS

Approximate Release of Draft EIS: Unknown at this time.

Point of Contact for Information

Dennis Ossenkop, 1601 Lind Ave. SW., Suite 315, Renton, WA 98055–4056, Telephone: 425–227–2611.

Dated: September 27, 2002.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 02–25317 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2002, there were 11 applications approved. Additionally, four approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Asheville Regional Airport Authority, Asheville, North Carolina.

Application Number: 02–02–C–00–AVL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,977,794.

Earliest Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Asheville Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Install fire alarm system.
Flight information display.
Construct runway safety area, runway 16, phase I.
Construct runway safety area, runway 16, phase II.
Rehabilitate terminal sidewalks.
Modify access road.
Construct perimeter security road.
Construct aircraft rescue and firefighting road.
Install perimeter fencing.
Construct runway safety area, runway 16, phase III.
Replace terminal roof.
Install emergency generators.
Replace chiller.
Update master plan.
Install baggage belt.
Modify loading bridge.
Construct baggage facility.
Rehabilitate runway lights.
Improve runway/taxiway safety area.
Expand baggage claim.

Expand holding room.
Install new airfield lighting vault.
Expand general aviation ramp.
Rehabilitate runway and taxiway.
Acquire passenger lift device.
Install runway lighting.
Rehabilitate taxiway lights.
Install sprinkler system.
Modify terminal.
Construct north access road.
Construct perimeter security road, phase II.
Security enhancements.
PFC administrative costs.

Brief Description of Disapproved Project: Acquire emergency response trailer.

Determination: Disapproved. The FAA has determined that the acquisition of this trailer is not a requirement of Part 139. In addition, there does not appear to be any special situation or mitigating circumstance at this airport that would meet the basic criteria for expanded eligibility of equipment to meet a particular safety requirement at this airport.

Decision Date: July 5, 2002.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Atlanta Airports District Office, (404) 305–7148.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 02–05–C–00–DCA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $33,895,949.

Earliest Charge Effective Date: September 1, 2006.

Estimated Charge Expiration Date: November 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Part 135 nonscheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Ronald Reagan Washington National Airport (DCA).

Brief Description of Projects Approved for Collection at DCA at a $4.50 PFC Level and Use at Washington Dulles International Airport:

Taxiway F.
Taxiway J. extension.

Decision date: July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Eleanor Schifflin, Eastern Region Airports Division, (718) 553–3354.

Public Agency: Milwaukee County, Milwaukee, Wisconsin.

Application Number: 02–07–C–00–MKE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $38,715,244.

Earliest Charge Effective Date: December 1, 2011.

Estimated Charge Expiration Date: May 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at General Mitchell International Airport (MKE).

Brief Description of Projects Approved for Collection at MKE and Use at MKE:

C Concourse hydrant fueling system.
7R/25L edge lights.
Electrical system upgrade—airfield.
Ground run-up enclosure construction.
Corporate hangar road reconstruction.
Relight terminal roadway.
Elevator controls upgrade.
PFC administrative costs.
D concourse expansion.
Taxiway B–C.
North ticketing expansion.
Airport security improvements.
Part 150 update.
Renovate road to south maintenance shop area.
Separate taxiway circuits and add duct banks.

Brief Description of Project Approved for Collection at MKE and Use at Lawrence J. Timmerman Airport:

Rehabilitate runway and taxiway.

Brief Description of Projects Approved for Collection at MKE:

International arrivals building ramp expansion.
Outer taxiway extension.

Decision Date: July 9, 2002.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: Sacramento County Department of Airports, Sacramento, California.

Application Number: 02–07–C–00–SMF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $11,141,350.

Earliest Charge Effective Date: November 1, 2013.

Estimated Charge Expiration date: March 1, 2014.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Closed circuit television camera and video cassette recorder.
Card access system replacement.
Taxiway A replacement.
Aircraft rescue and firefighting vehicle replacement.
Runway 16R/34L and exit taxiways rehabilitation.
Terminal A apron, phase 2.
Aircraft rescue and firefighting building remodel.
Cargo building pavement reconstruction.

Brief Description of Project Approved for Collection and Use at a $3.00 PFC Level: International arrival facility.

Decision Date: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Columbia, Missouri.

Application Number: 02–01–C–00–COU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,363,932.

Earliest Charge Effective Date: November 1, 2002.

Estimated Charge Expiration Date: October 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Acquisition of rapid intervention vehicle.
Phases I and II resurfacing of general aviation apron, purchase of snowblower, and aircraft ramp and airport access road lighting.
Runway 13/31 asphalt overlay and Gate 5 relocation.
Overlay airport access road and terminal loop, construct snow removal equipment building addition, and construct taxiway C and apron underdrain.
Fence replacement, computer access gates, and standby electrical power.
Phase I air carrier apron extension and consultant services.
Phase II of air carrier apron south extension and front end loader.
Phase I of commercial apron expansion and modify Gate 9.
Rehabilitation of north cargo apron.
Master plan update.
Repair runway 2/20 pavement, remark airfield, upgrade runway 2/20 north safety area, and replace underground lighting control cables.
Phase II of commercial apron expansion.

Reimbursement for land acquisition.
Preliminary terminal study.
Environmental assessment.

Brief Description of Projects Approved for Collection:

Replacement of snow plow/spreader truck.
Cargo apron south addition.
Upgrade runway 13/31.
Preliminary terminal upgrade design.

Decision Date: July 16, 2002.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: County of Pitkin, Aspen, Colorado.

Application Number: 02–04–C–00–ASE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $986,381.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: August 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Aspen-Pitken County Airport.

Brief Description of projects Approved for Collection and Use:

Master plan.
East side infrastructure development planning and design.
Relocation/rehabilitation of north general aviation apron.
Construct of aircraft parking apron.
Replace runway lighting and install runway end identifier lights on runway 33.
Replace wildlife fence.
Installation of medium intensity approach lighting system.

Decision Date: July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher J. Schaffer, Denver Airport District Office, (303) 342–1258.

Public Agency: Walker Field Airport Authority, Grand Junction, Colorado.

Application Number: 02–05–U–00–GJT.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $1,480,000.

Charge Effective Date: April 1, 2003.

Charge Expiration Date: July 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Expand terminal building boarding area/concourse/loading bridges.

Decision Date: July 24, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Tallahassee, Florida.

Application Number: 02–04–C–00–TLH.

Application Type: Impose and use a PFC.

PFC Level: $4.50

Total PFC Revenue Approved in This Decision: $10,063,307.

Earliest Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: October 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tallahassee Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal second floor access.
Integrated communication system.
Airport layout plan update.
Security system upgrade.
Former landfill remediation.
Air carrier taxiway rehabilitation.
Terminal apron security fencing.
Runway 9/27 safety area improvements.
Master plan update.
Passenger loading bridges.
Terminal improvement program.
Runway 18/36 safety area improvements.
Terminal apron rehabilitation.
Taxiway J extension.
Sinkhole stabilization and taxiway repair.
Airside perimeter/service road.
Security fencing and gate improvements.
Taxiway J rehabilitation and widening.
Electrical vault upgrade.
Runway 9/27 lighting improvements.
General aviation access taxiway R construction.
Air cargo apron expansion.
Runway 18/36 shoulder improvements.
Security closed circuit television camera rehabilitation and improvements.
Terminal access road.
North apron overlay.

Brief Description of Projects Approved for Collection:

Terminal security improvements.
Crisis command/communications center.
Taxiway N rehabilitation.
Taxiway P rehabilitation.
General aviation taxiway overlays.
Interactive training system improvements.
New general aviation central apron construction.
General aviation south apron rehabilitation.
Construct taxiway X.
Terminal apron lighting improvements.
Old terminal apron rehabilitation.
Americans with Disabilities Act passenger lift.
Taxiway S extension.
Airport storm water drainage improvements.
General aviation apron lights.

Brief Description of Disapproved Project: Automated vehicle identification system.

Determination: Disapproved. The FAA has determined that this project appears to exceed known Federal security requirements. The information provided in the application was not sufficient to allow the FAA to determine that this project was eligible.

Brief Description of Withdrawn Project: Instrument landing system/global positioning system installation.

Determination: This project was withdrawn by the public agency by letter dated May 13, 2002. Therefore, the FAA did not rule on this project in this record.

Decision Date: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Farris, Orlando Airports District Office, (407) 812–6331.

Public Agency: Kenton County Airport Board, Covington, Kentucky.

Application Number: 02–08–C–00–CVG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $259,789,000.

Earliest Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: July 1, 2008.

Classes of Air Carriers Not Required To Collect PFC's:

(1) Part 121 supplemental operators which operate at the airport without an operating agreement with the public agency and enplane less than 1,500 passengers per year; and (2) Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class

accounts for less than 1 percent of the total annual enplanements at Cincinnati/Northern Kentucky International Airport.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Runway 17/35 (future 18R/36L).

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Deicing system enhancements—storm water treatment system, Gunpowder Creek.

Concourse C improvements—flight information display system replacement.

Terminal area blast analysis.

Airport security master plan.

Extend runway 9/27 phase 2—1,000 feet.

Brief Description of Project Partially Approved for Collection and Use at a $3.00 PFC Level: Noise compatibility program measures.

Determination: Partially approved. The portion of the project described as ''ANAV Flight Procedures Development and Ground Station Design'' is not Airport Improvement Program (AIP) eligible in accordance with paragraph 557(a) of FAA Order 5100.38B, AIP Handbook (May 31, 2002).

Brief Description of Withdrawn Project: KR 212 interchange improvements.

Determination: This project was withdrawn by the public agency by letter dated July 19, 2002. Therefore, the FAA did not rule on this project in this record.

Decision Date: July 26, 2002.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495.

Public Agency: Port of Bellingham, Bellingham, Washington.

Application Number: 02–05–C–00–BLI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $930,653.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bellingham International Airport.

Brief Description of Projects Approved for Collection and Use:

Extension of runway 16/34, new high intensity runway lighting system, extension of taxiway lighting, wetlands mitigation.

Airport sign system.

Master Plan.

Construct and rehabilitate aircraft apron.

Acquisition of snow removal equipment.

Construct snow removal equipment building.

Upgrades on security gates, installation of wildlife fencing.

Reconstruct and rehabilitate taxiway D.

Construct/reconstruct terminal apron.

Construct deicing facility.

Acquisition of passenger lift device.

Master plan.

Acquire aircraft rescue and firefighting vehicle.

Decision Date: July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Marquette County, Gwinn, Michigan.

Application Number: 02–06–C–00–SAW.

Application Type: Impose and use a PFC.

PCF Level: $4.50.

Total PCF Revenue Approved in this Decision: $227,558.

Earliest Charge Effective Date: December 1, 2002.

Estimated Charge Expiration Date: May 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct north access road.

Taxiway rehabilitation.

Passenger boarding bridges.

Snow removal equipment.

Runway pavement rehabilitation.

Taxiway signage.

Refurbish beacon.

Decision Date: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Amendments to PFC Approvals:

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–02–BZN, Bozeman, MT	06/28/02	$4,827,700	$5,277,700	01/01/03	05/01/03
93–01–C–03–PLB, Plattsburgh, NY	07/08/02	123,980	121,502	02/01/99	11/01/96
01–03–C–01–LIT, Little Rock, AR	07/17/02	15,986,750	15,986,750	05/01/04	05/01/04
00–03–C–02–MSO, Missoula, MT	07/17/02	1,500,000	2,500,000	02/01/04	02/01/05

Issued in Washington, DC on September 30, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–25473 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–03–C–00–PWM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Jetport, Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Portland International Jetport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 6, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC

Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeff Schultes, Airport Manager, Portland International Jetport at the following address: 1001 Westbrook Street, Portland, Maine 04102.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Portland under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (718) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from PFC at Portland International Jetport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 3, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Portland was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 2002.

The following is a brief overview of the application.

Proposed charge effective date: August 1, 2003.

Proposed charge expiration date: June 1, 2010.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $14,214,483.

Brief description of proposed project(s):

Impose only projects:

Baggage Claim Expansion and Improvements Impose and use projects:

Terminal Canopy Completion
Passenger Boarding Bridge Acquisition
Passenger Boarding Bridge—Regional Jet Modifications
Runway 11/29 Upgrade
Taxiway Improvements
Terminal Roadway System Expansion
Snow Removal Equipment Acquisition
PFC Program Administration Costs

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Jetport.

Issued in Burlington, Massachusetts on September 25, 2002.

Bradley A. Davis,

Acting Manager, Airports Division, New England Region.

[FR Doc. 02–25474 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Olmsted County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the proposed reconstruction of Trunk Highway (TH) 14 and bridge replacement over the Dakota, Minnesota & Eastern (DM&E) Railroad line, from the end of the four-lane roadway on the east side of Rochester through Eyota, approximately 8 miles, in Olmsted County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Craig Lenz, Project Manager, Minnesota Department of Transportation—District 6, 2900 48th Street NW., Rochester, Minnesota 55901, Telephone (507) 285–7353; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an EIS on a proposal to reconstruct TH 14, including replacement of the bridge over the DM&E Railroad line, from the end of the four-lane roadway on the east side of the City of Rochester through the City of Eyota, approximately 8 miles, in Olmsted County, Minnesota. The project proposes to replace a seventy-three year old railroad bridge and improve the geometry of the bridge approaches and the roadway segment in order to address identified safety, operational, structural, and geometric deficiencies.

TH 14 is a major east-west highway in southern Minnesota and plays a major role in the movement of people and goods. This roadway serves a variety of travel demands including mobility to serve commuter, commercial, and recreational traffic and access to homes, farms, and commercial retail businesses. The purpose of the project is to address present and future safety, operations, structural and geometric deficiencies along this segment of TH 14. Identified problems include high crash rates; lack of passing zones; several accesses to the roadway; geometric deficiencies in the roadway design including sharp curves, narrow shoulders and minimal vertical and horizontal clearance under the bridge; and a decrease to unacceptable levels of service in the future if no improvements are made.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: No-Build and Build Alternatives. Each of the three proposed Build Alternatives will include both a four-lane suburban and a four-lane rural roadway design and all of the Build Alternatives assume a roadway overpass of the DM&E Railroad. The Build alternatives include: *Alternative 1: Existing Alignment*—Central Bridge Location (over the railroad), *Alternative 2: North Alignment*—West Bridge Location (over the railroad), and *Alternative 3: South Alignment*—East Bridge Location (over the railroad). The ''Trunk Highway 14 Scoping Document/Draft Scoping Decision Document'' will be published in October 2002. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. Interagency and public scoping meetings will also be held during the comment period. The Interagency and public scoping and information meetings have been scheduled for Wednesday, December 4, 2002 from 2 to 3:30 p.m. at the Eyota City Hall, 38 West South Front Street, and 4:30 to 7 p.m. to the Dover-Eyota High School, 615 South Avenue, respectively. Public notice will be given for these meetings.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency

and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 27, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–25345 Filed 10–4–02; 8:45 am]

BILLING CODE 34910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Monday, October 14, 2002, in the McCormick Room at the Chicago Hilton. The meeting runs from 10 a.m.–2 p.m. A luncheon starts at 1 p.m.

The General Session includes the following items: (1) Welcome; (2) Introductions and Antitrust Statement; (3) Approval of Minutes (From the Last Meeting); (4) Approval of Program Plan Homeland Security Supplement and Advice Letter; (5) Approval of IVI Advice Letter; (6) Review Leadership Steering Committee Appointments; (7) Discussion of Areas of Responsibility (coverage)—Forums and Programs; (8) Review Two-Day Summit Agenda and Discussion of Logistics; (9) Discussion of Outcome Strategies: Special Interest Groups, Management of Projects, Member Communication, and Other Items; (10) Other Business; (11) Luncheon; (12) Adjourn.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of ITS AMERICA will meet on Monday, October 14, 2002 from 10 a.m.–2 p.m.

ADDRESSES: The Hilton Chicago, 720 S. Michigan Ave., Chicago, IL 60605. Phone: (312) 922–4400 and Fax (312) 922–5240.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW., Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: October 2, 2002.

Jeffrey Paniati,

Acting Associate Administrator, Office of Operations, Federal Highway Administration, and Acting Director, ITS Joint Program Office, Department of Transportation.

[FR Doc. 02–25413 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–22–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.

Port Authority Trans-Hudson Corporation

[Docket Number FRA–2002–12936]

The Port Authority Trans-Hudson Corporation (PATH) seeks a temporary waiver of compliance until December 31, 2003, for one locomotive from the requirements of the *Railroad Safety Appliance Safety Standards,* 49 CFR 231.30(a)(2), which requires all locomotives used in switching service built prior to April 1, 1977, be equipped with four switching steps. The locomotive for which the waiver is requested is a 42-ton General Electric diesel switcher style locomotive without switching steps. PATH is leasing the locomotive for use by a contractor. They also state that the locomotive was refurbished in April 2002, and that it is physically impossible to modify the locomotive to incorporate switching steps.

If the request is granted, PATH will utilize the locomotive during the reconstruction of their system damaged during the terrorist attack on the World Trade Center on September 11, 2001. The locomotive would be utilized to transport materials and equipment to and from a construction site at a speed not to exceed 15 mph. PATH needs the waiver because the locomotive would travel for approximately one mile over PATH's main line, from PATH's ''C'' yard in Jersey City, New Jersey to Exchange Place Station. The construction site extends west of Exchange Place and is off limits to any passenger service.

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–2002–12936) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. Communications received within 30 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 September 25, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–25406 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Notice of Proposed Rule was published on December 19, 2001, [66 FR 65536–65567].

DATES: Comments must be submitted on or before November 6, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph Scott 202–366–8525 and Roger Kurrus 202–366–2750 at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–22),. 400 Seventh Street, SW., Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

(1) *Title:* Tire Identification and Recordkeeping.

OMB Number: 2127—0503.

Type of Request: Revision as a result of a notice of proposed rulemaking.

Abstract: Each tire manufacturer must collect and maintain records of the names and address of the first purchasers of new tires. All tire dealers and distributors must record the names and addresses of retail purchasers of new tires and identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information. The completed forms returned to the tire manufacturers where they are to remain for three years after the date received by the manufacturer. Additionally, motor vehicle manufacturers are required to record the names and addresses of the first purchasers of new motor vehicles, together with the identification numbers of the tires on the new vehicles.

Affected Public: Businesses and other-for-profit institutions (tire manufacturers, dealers, and distributors).

Estimated Total Annual Burden: 271,750.

(2) *Title:* Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Equipment.

OMB Number: 2127—0541.

Type of Request: Revision as a result of a notice of proposed rulemaking .

Abstract: 49 U.S.C. 30117 authorizes the Secretary to require that manufacturers provide technical information, as for example information directed for publication in a vehicle owner's manual, related to the performance and safety specified in the Federal motor vehicle safety standards for the purposes of educating the consumer and providing safeguards against improper use. Using this authority, the agency issued the following FMVSS and regulations, specifying that certain safety precautions regarding items of motor vehicle equipment appear in the vehicle owner's manual to aid the agency in achieving many of it's safety goals.

Affected Public: Individuals, households, business, other-for-profit, not-for-profit, farms, Federal Government and State, Local, or Tribal Government.

Estimated Total Annual Burden: 1771.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on October 2, 2002.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 02–25464 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on February 28, 2002 (67 FR 9353–9354).

DATES: Comments must be submitted on or before November 6, 2002.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alan Block at the National Highway Traffic Safety Administration, Office of Research and Technology (NTI–130), 202–366–6401, 400 Seventh Street, SW., Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 2002 Motor Vehicle Occupant Safety Survey.

OMB Number: 2127–New.

Type of Request: New information collection requirement.

Abstract: The Motor Vehicle Occupant Safety Survey (MVOSS) is conducted biennially for the National Highway Traffic Safety Administration to collect data on occupant protection issues. It is a national telephone survey composed of two questionnaires, each administered to a randomly selected

sample of approximately 6,000 persons age sixteen and older. One questionnaire focuses on attitudes, knowledge, and self-reported behavior regarding seat belts, while the other questionnaire focuses on child restraint use. Additional topics addressed by the survey include air bags, emergency medical services, and crash injury experience. The proposed survey is the fifth in the MVOSS series. The 2002 Motor Vehicle Occupant Safety Survey will collect data on topics included in the preceding surveys in order to monitor change over time in the use of occupant protection devices and in attitudes and knowledge related to motor vehicle occupant safety. The survey will also include new questions that address emergent issues in occupant protection.

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 4,000 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: October 2, 2002.

Marilena Amoni,

Associate Administrator for Program Development and Delivery.

[FR Doc. 02–25465 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13384]

Notice of Receipt of Petition for Decision that Nonconforming 2001 and 2002 Ducati 996R Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 and 2002 Ducati 996R motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 and 2002 Ducati 996R motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 6, 2002

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Superbike Racing, Inc. of Atlanta, Georgia (''SRI'') (Registered Importer 1–286) has petitioned NHTSA to decide whether non-U.S. certified 2001 and 2002 Ducati 996R motorcycles are eligible for importation into the United States. The vehicles that SRI believes are substantially similar are 2001 and 2002 Ducati 996R motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Ducati Motor Holding S.p.A. of Bologna, Italy, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 and 2002 Ducati 996R motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SRI submitted information with its petition intended to demonstrate that non-U.S. certified 2001 and 2002 Ducati 996R motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 and 2002 Ducati 996R motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 108 *Lamps, Reflective Devices and Associated Equipment,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–25409 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13382]

Notice of Receipt of Petition for Decision That Nonconforming 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is November 6, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]

FOR FURTHER INFORMATION CONTACT: Luke Loy, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

DC Imports, Inc. of Deerfield Beach, Florida (''DCI'') (Registered Importer 0–242) has petitioned NHTSA to decide whether non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles are eligible for importation into the United States. The vehicles that DCI believes are substantially similar are 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles that were manufactured for importation into and sale in the United States and certified by their manufacturer, Bimota Motor S.p.A. of Rimini, Italy, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

DCI submitted information with its petition intended to demonstrate that non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also states that vehicle identification number (VIN) plates that meet the requirements of 49 CFR part 565 have been affixed to non-U.S. certified 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 106 *Brake Hoses*: Installation of a flexible conduit/brake hose that is certified to meet the standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies incorporating headlamps that are certified to meet the standard; (b) installation of a cable that will allow the headlamp to be steady-burning when the ignition is in the ''on'' position.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*: installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays*: (a) Installation of a U.S. model speedometer calibrated in miles per hour; (b) installation of passenger footrests that fold rearward and upward when not in use.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 1, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–25410 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13355; Notice 1]

Bridgestone/Firestone; Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone has determined that approximately 4,700 P235/75R15 Dayton Timberline A/T tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The Sao Paulo, Brazil plant produced these noncompliant tires during the week 40 through and including week 49 of the year 2001. The subject tires were mismarked as ''Extra Load.'' The actual markings on the subject tires are:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press, Extra Load. The correct markings should be:

Max load 920 Kg (2028 lbs.) at 300 kPa (44 psi) max press.

Bridgestone/Firestone believes that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The subject tires with the exception of the ''Extra Load'' marking meet all the requirements of 49 CFR Section 571.109.

2. The subject tires were tested by Bridgestone/Firestone and meet the requirements of high speed, endurance, strength, and bead unseat as defined in 49 CFR Section 571.109 for the ''Extra Load'' designation.

3. The subject tires as shipped from the manufacturing plant were identified by tire labels and article number as standard load. Thus, the potential for sale of these tires as ''Extra Load'' is very small.

Bridgestone/Firestone submits that mismarking of the subject tires should be deemed inconsequential to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: November 6, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 1, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–25408 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13356; Notice 1]

Cooper Tire & Rubber Company; Receipt of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that approximately 956 Cooper Lifeliner Touring SLE tires in the 185/70R14 size do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The Texarkana, Arkansas, tire manufacturing facility had one mold involved in production during the twelfth and thirteenth production weeks of 2002, in which the plant identification code was incorrectly stated. The subject tires were molded ''DOT VT''. The correct molding for the Texarkana, Arkansas plant identification code should have been DOT UT''. The incorrect plant identification code was removed from the mold and the correct plant identification code inserted.

Cooper states that the incorrect plant identification code on each tire does not present ''a safety-related defect'' (sic). Their tire registration system will be programmed to register these tires with the incorrect plant identification code. In the event of a recall, this same system will identify the tire registrations with the incorrect plant identification code. The involved tires produced from these molds comply with all other requirements of 49 CFR 571.109.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 6, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 1, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–25407 Filed 10–4–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34242 (Sub–No. 1)]

Union Pacific Railroad Company-Trackage Rights Exemption-The Burlington Northern and Santa Fe Railway Co.

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34242 [1] to permit the trackage rights to expire on or about November 23, 2002, in accordance with the agreement of the parties.

DATES: This exemption will be effective on November 6, 2002. Petitions to stay must be filed by October 17, 2002. Petitions to reopen must be filed by October 28, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34242 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal Copy Service, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our website at ''*http://www.stb.dot.gov*.''

Decided: September 26, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–25272 Filed 10–4–02; 8:45 am]

BILLING CODE 4915–00–P

[1] On August 14, 2002, the Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over BNSF's rail lines between BNSF milepost 460.0 near Sweetwater, TX, and BNSF milepost 655.7 near Clovis, NM, a distance of approximately 221.2 miles. *See Union Pacific Railroad Company-Trackage Rights Exemption-The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34242 (STB served Sept. 3, 2002). The trackage rights operations under the exemption were scheduled to be consummated on August 22, 2002.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0057.

Form Number: ATF F 487–B (5170.7).

Type of Review: Extension.

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid.

Description: ATF F 487–B is used to document the shipment of taxpaid Puerto Rican articles into the United States. The form is verified by Puerto Rican and U.S. Treasury Officials to certify that products are either taxpaid or deferred under appropriate bond. Serves as a method of protection of the revenue.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

OMB Number: 1512–0190.

Form Number: ATF F 5100.11.

Type of Review: Extension.

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

Description: ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 300.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 6,000 hours.

OMB Number: 1512–0195.

Form Number: ATF F 5110.25.

Type of Review: Extension.

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

Description: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF district office personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 20 hours.

OMB Number: 1512–0503.

Recordkeeping Requirement ID Number: ATF REC 5120/3.

Type of Review: Extension.

Title: Marks on Wine Containers.

Description: ATF requires that wine on wine premises be identified by statements of information on labels or contained in marks. ATF uses this information to validate the receipts of excise tax revenue by the Federal government. Consumers are provided with adequate identifying information.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,560.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–25358 Filed 10–4–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0001.

Form Number: ATF F 1370.3 and ATF F 1370.2.

Type of Review: Extension.

Title: Requisition for Forms or Publications (1370.3); and Requisition for Firearms Explosives Forms (1370.2).

Description: Forms are used by the general public to request or order forms or publications from the ATF Distribution Center. These forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms and publications by the general public.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Respondent: 1 hour, 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,725 hours.

OMB Number: 1512–0117.

Form Number: ATF F 5620.7 (2147).

Type of Review: Extension.

Title: Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

Description: ATF F 5620.7 documents taxpaid cigarettes, cigars, cigarette papers and tubes that were exported to a foreign country, Puerto Rico, or Virgin Islands. This form is used by taxpayer to claim drawback for tax paid on exported products.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 288.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 144 hours.

OMB Number: 1512–0472.

Form Number: ATF F 5630.5 and ATF 5630.7.

Type of Review: Extension.

Title: Special Tax Registration and Return Alcohol and Tobacco (5630.5); and Special Tax Registration and Return National Firearms Act (NFA)(5630.7).

Description: Excise taxes, alcohol, tobacco and firearms taxes, 26 U.S.C. Chapters 51, 52, and 53 authorize the collection of an occupational tax from persons engaging in certain alcohol, tobacco or firearms businesses. ATF F 5630.5 and/or ATF F 5630.7 is used to both compute and report the tax, and as an application for registry as required by statute. Upon receipt of the tax a special tax stamp is issued.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 90,700.

Estimated Burden Hours Per Respondent: 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 72,778 hours.

Clearance Officer: Jacqueline White, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–25359 Filed 10–4–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Departmental Offices/International Portfolio Investment Data Reporting Systems

OMB Number: 1505–0024.

Form Number: International Capital Forms CQ–1 and CQ–2.

Type of Review: Revision.

Title: Treasury International Capital (TIC) Form CQ–1: Report of Financial Liabilities to, and Financial Claims on, Foreign Residents; and Form CQ–2: Report of Commercial Liabilities to, and Commercial Claims on, Unaffiliated Foreign Residents.

Description: Forms CQ–1 and CQ–2 are required by law to collect timely information on international portfolio capital movements, including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners and certain affiliated foreigners held by non-banking enterprises in the U.S. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for formulating U.S. international financial and monetary policies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 6,800 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–25360 Filed 10–4–02; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 30, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before November 6, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1518.

Form Number: IRS Form 5498–MSA.

Type of Review: Extension.

Title: MSA or Medicare+Choice MSA Information.

Description: Form 5498–MSA is used to report contributions to a medical savings account as set forth in section 220(h).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 16,442.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,988 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–25361 Filed 10–4–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Performance Review Board—Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review performance appraisals for senior executives and to make recommendations to the appointing authority regarding proposed performance ratings, bonuses, and other related personnel actions.

EFFECTIVE DATE: October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 2.4–A, Washington, DC 20229, Telephone (202) 927–1250.

Background: There are two PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for senior executives who report directly to the Deputy Commissioner or the Commissioner of Customs. The members are:

Donnie A. Carter, Deputy Assistant Director, Recruitment and Hiring, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

John C. Dooher, Senior Associate Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury.

Carla F. Kidwell, Associate Director for Technology, Bureau of Engraving and Printing, Department of the Treasury.

Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury.

Carlton D. Spriggs, Deputy Director, U.S. Secret Service, Department of the Treasury.

Performance Review Board 2

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for all senior executives except those who report directly to the Deputy Commissioner or the Commissioner of Customs. The members are:

Assistant Commissioners:

Jayson P. Ahern, Field Operations.

Marjorie L. Budd, Training and Development.

S.W. Hall, Information and Technology/CIO.

William A. Keefer, Internal Affairs.

Dennis H. Murphy, Public Affairs.

Nicole R. Nason, Congressional Affairs.

Susan J. Rabern, Finance/CFO.

Donald K. Shruhan, International Affairs.

Michael T. Schmitz, Regulations and Rulings.

Robert M. Smith, Human Resources Management.

Deborah J. Spero, Strategic Trade.

John C. Varrone, Investigations.

Dated: September 13, 2002.

Robert C. Bonner,

Commissioner of Customs.

[FR Doc. 02–25381 Filed 10–4–02; 8:45 am]

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Federal Register

Monday,
October 7, 2002

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 575

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Resistance; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2001–9663; Notice 2]

RIN 2127–AI81

Consumer Information Regulations; Federal Motor Vehicle Safety Standards; Rollover Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 requires NHTSA to develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program, to carry out a program of conducting such tests, and, as these tests are being developed, to conduct a rulemaking to determine how best to disseminate test results to the public. In response, this document discusses the results of NHTSA's evaluation of numerous driving maneuver tests for the dynamic rollover consumer information program that Congress mandated for the American public beginning in the 2003 model year. This document also proposes several alternative methods for using the dynamic rollover test results in the agency's consumer information for vehicle rollover resistance.

DATES: *Comment Date:* Comments must be received by November 21, 2002.

ADDRESSES: All comments should refer to Docket No. NHTSA–2001–9663; Notice 2 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 10 a.m. to 5 p.m. Monday through Friday. For public comments and other information related to previous notices on this subject, please refer to DOT Docket Nos. NHTSA–2000–6859 and 8298 also available on the Web at *http://dms.gov/search,* and NHTSA Docket No. 91–68; Notice 3, NHTSA Docket, Room 5111, 400 Seventh Street, SW., Washington, DC 20590. The NHTSA Docket hours are from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical questions you may contact Patrick Boyd, NPS–23, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 and Dr. Riley Garrott, NRD–22, NHTSA Vehicle Research and Test Center, P.O. Box 37, East Liberty, OH 43319. Mr. Boyd can be reached by phone at (202) 366–6346 or by facsimile at (202) 493–2739. Dr. Garrott can be reached by phone at (937) 666–4511 or by facsimile at (937) 666–3590.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Safety Problem
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IV. Comments to the Previous Notice
V. National Academy of Sciences Rollover Rating Study
VI. Choice of Maneuvers for Dynamic Rollover Resistance Tests
VII. Proposed Rollover Resistance Rating Alternatives
VIII. Intent to Evaluate Centrifuge Test
IX. Handling Tests
X. Assessment of Costs and Benefits
XI. Rulemaking Analyses and Notices
XII. Submission of Comments
Appendix I. Summary of Evaluation Test Results

I. Executive Summary

Section 12 of the ''Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000'' directs the Secretary to ''develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests. As the Secretary develops a [rollover] test, the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public.'' The rulemaking must be carried out by November 1, 2002.

On July 3, 2001, NHTSA published a Request for Comments notice (66 FR 35179) discussing a variety of dynamic rollover tests that we had chosen to evaluate in our research program and what we believed were their potential advantages and disadvantages. It also discussed other possible approaches we considered but decided not to pursue. The driving maneuver tests to be evaluated fit into two broad categories: closed-loop maneuvers in which all test vehicles attempt to follow the same path; and open-loop maneuvers in which all test vehicles are given equivalent steering inputs. Other potential tests using a centrifuge or computational simulation were discussed but not included in our test plan. This notice discusses the comments we received and the results of our test program to date.

The TREAD Act calls for a rulemaking to determine how best to disseminate rollover test results to the public, and this Notice of Proposed Rulemaking proposes alternatives for using the dynamic tests results in consumer information on the rollover resistance of new vehicles. The resulting rollover resistance ratings will be part of NHTSA's New Car Assessment Program (NCAP). The tests will be carried out and reported to the public by NHTSA. This program places no regulatory requirements on vehicle manufacturers. Past NCAP ratings have been developed using a procedure of public notice and comment, but there was no legal requirement to do so since no regulatory requirements were imposed on any party except NHTSA. Because the dissemination of information will pose no regulatory burden on manufacturers, we provided a brief statement on the potential benefits of this program and no regulatory evaluation.

While the TREAD Act calls for a rulemaking to determine how best to disseminate the rollover test results, the development of the dynamic rollover test is simply the responsibility of the Secretary. Based on NHTSA's recent research to evaluate rollover test maneuvers, the National Academy of Sciences' study of rollover ratings, comments to the July 3, 2000 notice, extensive consultations with experts from the vehicle industry, consumer groups and academia, and NHTSA's previous research in 1997–8, the agency has chosen the J-turn and the Fishhook Maneuver as dynamic rollover tests. They are the limit maneuver tests that NHTSA found to have the highest levels of objectivity, repeatability and discriminatory capability. Vehicles will be tested in two load conditions using the J-turn at up to 60 mph and the Fishhook maneuver at up to 50 mph. Both maneuvers will be conducted with an automated steering controller, and the reverse steer of the Fishhook Maneuver will be timed to coincide with the maximum roll angle to create an objective ''worst case'' for all vehicles regardless of differences in resonant roll frequency. The light load condition will be the weight of the test driver and instruments, approximating a vehicle with a driver and one front seat passenger. The heavy load condition will add additional 175 lb manikins in all rear seat positions.

The National Academy of Sciences recommended that dynamic maneuver tests be used to supplement rather than replace Static Stability Factor (the basis of our present rollover resistance ratings) in consumer information on rollover resistance. This notice proposes two alternatives for consumer information ratings on vehicle rollover resistance that include both dynamic maneuver test results and Static Stability Factor. The first alternative is to include the dynamic test results as vehicle variables along with SSF in a statistical model of rollover risk. This is conceptually similar to the present

ratings in which a statistical model is used to distinguish between the effects of vehicle variables and demographic and road use variables recorded for state crash data on a large number of single vehicle crashes. The National Academy of Sciences demonstrated the tight confidence limits that can be achieved using a logistic regression model for this purpose. Such a model would be used to predict the rollover rate in single vehicle crashes for a vehicle considering both its dynamic maneuver test performance and its Static Stability Factor for an average driver population (as a common basis of comparison).

Under the first alternative, the ''star rating'' of a vehicle would be based on the rollover rate in single vehicle crashes predicted for it by a statistical model. The format would be the same as for the present rollover ratings (for example, one star for a predicted rollover rate in single vehicle crashes greater than 40 percent and five stars for a predicted rollover rate less than 10 percent). The present rollover ratings are based on a linear regression model using state crash reports of 241,000 single vehicle crashes of 100 make/model vehicles. We are proposing to replace the current rollover risk model with one that uses the performance of the vehicle in dynamic maneuver tests as well as its SSF to predict rollover risk. The performance of a vehicle in dynamic maneuver tests is simply whether it tipped-up or not in each of the four maneuver/load combinations. The lowest entry speed of maneuvers that caused tip-up will also be used if it improves the predictive fit of the model. In order to compute a logistic model of rollover risk, it is necessary to have large number of state crash reports of single vehicle crashes to establish rollover rates of vehicles for which the dynamic maneuver test performance and SSF are known. The agency is performing dynamic maneuver tests on about 25 of the 100 make/model vehicles for which we have SSF measurements and substantial state crash data. We believe this approach will ensure that the assigned NCAP ratings for rollover resistance correlate to the maximum extent possible with real-world performance. However, since the agency has not finished testing these 25 vehicles, we cannot yet say what the actual coefficients of the model relating dynamic maneuver test performance and SSF to predicted rollover rate will be. We are asking for comments on the validity of this concept only in this notice.

The second alternative is to have separate ratings for Static Stability Factor and for dynamic maneuver test performance. Dynamic maneuver tests directly represent on-road untripped rollovers. The dynamic maneuver test performance would be used to rate resistance to untripped rollovers in a qualitative scale, such as A for no tip-ups, B for tip-up in one maneuver, C for tip-ups in two maneuvers, etc. Here again the results of ongoing dynamic testing of vehicles with established rollover rates would guide the establishment of a qualitative scale. A statistical risk model is not possible for untripped rollover crashes, because they appear to be relatively rare events and they cannot be reliably identified in state crash reports. The current Static Stability Factor based system would be used to rate resistance to tripped rollovers. Again we are asking for comments on the usefulness and validity of this concept in this notice. Until our testing of the 25 vehicles is finished, we will not know what particular NCAP rating will be assigned to a make/model under either of these two alternatives.

II. Safety Problem

Rollover crashes are complex events that reflect the interaction of driver, road, vehicle, and environmental factors. We can describe the relationship between these factors and the risk of rollover using information from the agency's crash data programs. We limit our discussion here to light vehicles, which consist of (1) passenger cars and (2) multipurpose passenger vehicles and trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating.[1]

According to the 2000 Fatality Analysis Reporting System (FARS), 9,882 people were killed as occupants in light vehicle rollover crashes, which represents 31 percent of the occupants killed that year in crashes. Of those, 8,146 were killed in single-vehicle rollover crashes. Seventy-eight percent of the people who died in single-vehicle rollover crashes were not using a seat belt, and 65 percent were partially or completely ejected from the vehicle (including 53 percent who were completely ejected). FARS shows that 53 percent of light vehicle occupant fatalities in single-vehicle crashes involved a rollover event.

Using data from the 1996–2000 National Automotive Sampling System (NASS) Crashworthiness Data System (CDS), we estimate that 274,000 light vehicles were towed from a police-reported rollover crash each year (on average), and that 31,000 occupants of these vehicles were seriously injured (defined as an Abbreviated Injury Scale (AIS) rating of at least AIS 3).[2] Of these 274,000 light vehicle rollover crashes, 221,000 were single-vehicle crashes. (The present rollover resistance ratings estimate the risk of rollover if a vehicle is involved in a single-vehicle crash.) Sixty-two percent of those people who suffered a serious injury in single-vehicle towaway rollover crashes were not using a seat belt, and 48 percent were partially or completely ejected (including 41 percent who were completely ejected). Estimates from NASS CDS indicate that 81 percent of towaway rollovers were single-vehicle crashes, and that 84 percent (186,000) of the single-vehicle rollover crashes occurred after the vehicle left the roadway. An audit of 1992–96 NASS CDS data showed that about 95 percent of rollovers in single-vehicle crashes were tripped by mechanisms such as curbs, soft soil, pot holes, guard rails, and wheel rims digging into the pavement, rather than by tire/road interface friction as in the case of untripped rollover events.

According to the 1996–2000 NASS General Estimates System (GES) data, 61,000 occupants annually received injuries rated as K or A on the police KABCO injury scale in rollover crashes. (The police KABCO scale calls A injuries ''incapacitating,'' but their actual severity depends on local reporting practice. An ''incapacitating'' injury may mean that the injury was visible to the reporting officer or that the officer called for medical assistance. A K injury is fatal.) The data indicate that 212,000 single-vehicle rollover crashes resulted in 50,000 K or A injuries. Fifty-one percent of those with K or A injury in single-vehicle rollover crashes were not using a seat belt, and 23 percent were partially or completely ejected from the vehicle (including 20 percent who were completely ejected). Estimates from NASS GES indicate that 13 percent of light vehicles in police-reported single-vehicle crashes rolled over. The estimated risk of rollover differs by light vehicle type: 10 percent of cars and 10 percent of vans in police-reported single-vehicle crashes rolled over, compared to 18 percent of pickup trucks and 27 percent of SUVs. The percent of all police reported crashes for each vehicle type that resulted in rollover was 1.7 percent for cars, 2.0 percent for vans, 3.7 percent for pickup trucks and 5.4 percent for SUVs as estimated by NASS GES.

[1] For brevity, we use the term ''light trucks'' in this document to refer to vans, minivans, sport utility vehicles (SUVs), and pickup trucks under 4,536 kilograms (10,000 pounds) gross vehicle weight rating. NHTSA has also used the term ''ALTVs'' to refer to the same vehicles.

[2] A broken hip is an example of an AIS 3 injury.

III. Background

Section 12 of the ''Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000'' directs the Secretary to ''develop a dynamic test on rollovers by motor vehicles for a consumer information program; and carry out a program conducting such tests. As the Secretary develops a [rollover] test, the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public.'' The rulemaking must be carried out by November 1, 2002.

On July 3, 2001, NHTSA published a Request for Comments notice (66 FR 35179) discussing a variety of dynamic rollover tests that we had chosen to evaluate in our research program and what we believed were their potential advantages and disadvantages. It also discussed other possible approaches we considered but decided not to pursue. The driving maneuver tests to be evaluated fit into two broad categories: closed-loop maneuvers in which all test vehicles attempt to follow the same path; and open-loop maneuvers in which all test vehicles are given equivalent steering inputs. Other potential tests using a centrifuge or computational simulation were discussed but not included in our test plan. This notice discusses the comments we received and the results of our test program to date.

The TREAD Act calls for a rulemaking to determine how best to disseminate rollover test results to the public, and this Notice of Proposed Rulemaking proposes several alternatives for using the dynamic tests results in consumer information on the rollover resistance of new vehicles. The resulting rollover resistance ratings will be part of NHTSA's New Car Assessment Program (NCAP). The tests will be carried out and reported to the public by NHTSA. This program places no regulatory requirements on vehicle manufacturers. Past NCAP ratings have been developed using a procedure of public notice and comment, but there was no legal requirement to do so since no requirements were imposed on any party except NHTSA.

NHTSA's NCAP program has been publishing comparative consumer information on frontal crashworthiness of new vehicles since 1979, on side crashworthiness since 1997, and on rollover resistance since January 2001. The present rollover resistance ratings are based on the Static Stability Factor (SSF) which is the ratio of one half the track width to the center of gravity (c.g.) height. (see *http://www.nhtsa.dot.gov/hot/rollover/* for ratings and explanatory information).

SSF was chosen over vehicle maneuver tests in the present ratings system because it represents the first order factors that determine vehicle rollover resistance in the 95 percent of rollovers that are tripped by impacts with curbs, soft soil, pot holes, guard rails, *etc.* or by wheel rims digging into the pavement. In contrast, untripped rollovers are those in which tire/road interface friction is the only external force acting on a vehicle that rolls over. Driving maneuver tests directly represent on-road untripped rollover crashes which are about 5 percent of the total, and test performance can be improved by vehicle changes that may not improve resistance to tripped rollovers. Other reasons for selecting the SSF measure are: driving maneuver test results are greatly influenced by SSF; the SSF is highly correlated with actual crash statistics; it can be measured accurately and inexpensively and explained to consumers; and changes in vehicle design to improve SSF are unlikely to degrade other safety attributes.

Vehicle manufacturers generally oppose the present rollover resistance ratings because they believe that SSF is too simple since it does not include the effects of suspension deflections, tire traction and electronic stability control (ESC) and because they believe that the influence of vehicle factors on rollover risk is too slight to warrant consumer information ratings for rollover resistance. In the conference report dated October 23, 2000 of the FY2001 DOT Appropriation Act, Congress permitted NHTSA to move forward with the rollover rating proposal and directed the agency to fund a National Academy of Sciences study on vehicle rollover ratings. The study topics are ''whether the static stability factor is a scientifically valid measurement that presents practical, useful information to the public including a comparison of the static stability factor test versus a test with rollover metrics based on dynamic driving conditions that may induce rollover events.'' The National Academy's report was completed and made available in pre-publication form on February 21, 2002. Section IV discusses the findings and recommendations of the study.

IV. Comments to the Previous Notice

In its July 3, 2001 Request for Comments notice (66 FR 35179), NHTSA solicited comment on the development of a dynamic test for vehicle rollover resistance and identified a number of tests it planned to evaluate. The notice posed the following five sets of questions for comments. Most commenters either supported one of the tests being evaluated, suggested another test, or described elements the commenter believed to be important for any test chosen for rollover resistance. In this way, most commenters responded to the substance of question 1. While only a few commenters responded specifically to the other questions, parts of the general comments of other commenters are discussed in the context of the questions.

Question 1: NHTSA has decided to devote its available time and resources under the TREAD Act to develop a dynamic test for rollover based on driving maneuver tests. Is this the best approach to satisfy the intent of Congress in the time allotted? Are there additional maneuvers that NHTSA should be evaluating? Which maneuver or combination of maneuvers do you believe is the best for rollover rating? Are these other approaches well enough developed and validated that they could be implemented 18 months from now?

Comments: In answer to this question many commenters either voiced a preference for one of the maneuvers in the test plan NHTSA announced in its July RFC Notice or made specific suggestions for other tests. Daimler-Chrysler (D–C), Continental-Teves, BMW, Mitsubishi and Volkswagen (VW) supported the use of the ISO 3388 Part 2 double lane change test (developed by VDA, the German vehicle manufacturers' association) as the dynamic rollover test. VW suggested that the ratings should include three components: (a) SSF for general overall rating of static stability, (b) the ISO 3388 Part 2 test with minimum entry of 60 kph without 2 wheel lift, and (c) a dynamic handling test that gives credit to ESC.

Several commenters supported the variations of the fishhook test. Toyota suggested a fishhook test with fixed timing using the LAR (lateral acceleration at rollover [tip-up]) criterion as test for untripped rollover. Toyota's recommendation also suggested using the ISO 3388 PART 2 test as a stability/controllability test, with entry speed and peak to peak yaw rate as the measured criteria. Toyota also offered a hypothetical star rating breakdown for LAR as a rollover rating and a star rating chart relating entry speed and peak to peak yaw rate in the ISO 3388 PART 2 test as a separate controllability rating. TRW stated that rollover test maneuvers should excite worst case roll dynamics, but that some conditions on the vehicle path should

be observed to keep handling tradeoffs in check. It expressed the opinion that a fishhook test with steering based on roll rate best approached the stated goal but that future developments in simulation could also be useful for rollover resistance ratings. Honda recommended a fishhook maneuver with a protocol for optimizing to the worst case timing for each vehicle as a test for untripped rollover resistance combined with the basic quasi-static centrifuge test to measure tripped rollover resistance. Nissan had previously suggested a fishhook test and its own optimization protocol, but in its comment to this notice, Nissan changed its position stating that the fishhook may be too severe for consumer information and that it has no data correlating it to real world accidents. It suggested that NHTSA should test for handling properties instead of rollover resistance.

NHTSA's July RFC Notice announced a research plan that excluded the centrifuge test on the basis that it was not deemed sufficiently ''dynamic'' for the requirements of the TREAD Act and for concern that a vehicle optimized for the centrifuge test may have more oversteer than the manufacturer would otherwise choose. Nevertheless, a number of commenters were in support of rollover resistance tests that included centrifuge testing. Ervin and Winkler of UMTRI suggested a number of possible test modes using a centrifuge including a basic quasi-static mode which adds suspension roll and shear effects to SSF, tether release modes which add roll inertial forces somewhat analogous to J-turn and fishhook maneuvers, and a curb trip mode with a sliding table. They also suggested that a driving maneuver handling test for yaw stability be performed in addition to the centrifuge test. As noted above, a quasi-static centrifuge test for tripped rollover was part of Honda's recommendation. CU also suggested a centrifuge (or SSF as an alternative) as part of recommended suite of tests also including a dynamic maneuver test with steering reversal (like the fishhook) and handling tests for maximum lateral acceleration and yaw stability. Advocates commented that driving maneuver tests by themselves are not sufficient for rollover resistance tests because they only define untripped rollover resistance, and Advocates recommend that UMTRI's centrifuge tests should be investigated because they can be applied to both tripped and untripped rollover resistance.

GM recommended that the centrifuge test be substituted for Side Pull Ratio or SSF in the Stability Margin concept it had recommended to NHTSA in comments to previous notices on rollover resistance ratings. It also supplied information addressing NHTSA's concern that the centrifuge test could reward undesirable changes in suspension roll stiffness distribution. The issue first arose in comments from Ford on a 1994 NHTSA proposal for rollover consumer information based on Tilt Table Ratio. Ford stated that a vehicle's score in a tilt table test is greatest if both the front and rear tires lift simultaneously when the table is inclined at the minimum angle for two wheel lift, and that the manufacturer could achieve the optimum score by stiffening the rear suspension relative to the front. If the manufacturer did so, the result would be a vehicle with less understeer as the trade-off for a better Tilt Table Ratio. The same optimization principal would apply to centrifuge tests. GM's comment included curves showing the point of optimization of Side Pull Ratio (theoretically the same as the centrifuge measurement) and its sensitivity to the proportion of total roll stiffness provided by the front suspension for a typical SUV and a typical car. GM compared the curves to the suspension characteristics of these production vehicles and found that (a) the suspension roll stiffnesses of the production vehicles were close to the optimized condition as designed with a very small sensitivity to further suspension changes and (b) the suspension changes to obtain the negligible improvement in rollover test score involved a relative stiffening at the front that would increase rather than decrease the understeer. GM concluded that manufacturers would have little to gain by suspension tuning for centrifuge test scores and that the tuning would be at least as likely to increase understeer as to decrease it. We believe that Ford's comment was correct in 1994, but NHTSA has recently reviewed data showing a trend toward less understeer in SUVs of more recent design. GM's dismissal of the issue may reflect more accurately the design of today's new vehicles.

Toyota and GM were the only commenters to suggest how the results of their rollover and handling tests could be expressed in ratings. GM suggested that the following conditions be used to define ''good rollover resistance for light-duty vehicles'': (a) quasi-static centrifuge test tip-up threshold of at least 0.9g; (b) maximum lateral acceleration in a circular driving maneuver of at least 0.6g; and (c) a stability margin (a–b) at least 0.2g or 1.5/wheelbase [in meters] squared. GM estimated that a centrifuge measurement of 0.9g would correspond to a SSF of 1.06. However, we would estimate that centrifuge measurement as corresponding closer to a SSF of 1.00, based on comparisons with tilt table tests with an allowance for the vertical load error inherent with the tilt table.

Based on its stability margin concept of good rollover resistance, GM suggested the following ''star rating'' system. A vehicle passing all three conditions for good rollover resistance would be rated with two stars. Failing any one of the conditions would reduce its rating to one star. Bonus stars above the two star level would be awarded for a centrifuge test measurement 1.0g or better, a maximum lateral acceleration measurement of 0.7g or better, or a stability margin 0.1 or more above the minimum (0.2g or 1.5/wheelbase [in meters] squared). A vehicle satisfying all of these higher conditions would receive a five star rating. GM also suggested that NHTSA consider a symbol other than a star for rollover resistance ratings to differentiate them from frontal and side crashworthiness ratings. As previously mentioned, Toyota offered a hypothetical star rating breakdown for LAR in a Fishhook as a rollover rating.

Previously, Ford had suggested a proprietary test method (Path Corrected Limit Lane Change (PCLLC)) involving a series of double lane change maneuvers controlled by a human driver and a mathematical technique for correcting the measurements of vehicle acceleration and wheel force to those expected if the vehicle perfectly adheres to a desired common path for vehicle comparisons. NHTSA agreed to evaluate this method but keep the details of the analytical technique confidential. Appendix I of this notice discusses the results of PCLLC testing using the same vehicles tested in other maneuver tests.

In its comment to the July notice, Ford announced that the same test measurements could be made using a newly developed advanced path following steering controller to replace the human driver and the proprietary mathematical correction technique. Ford expected both implementations of the protocol to produce the same measurements. But it changed its recommendation to the path following steering controller because the face validity (realistic appearance) of the test would be enhanced by having the advanced steering controller actually drive the vehicles through nominally identical paths rather than rely on corrections to the unavoidably variable paths taken by skilled human test drivers. Ford's comment was made after

NHTSA had run the PCLLC maneuvers in a cooperative effort with Ford to evaluate that test method. However, we believe that the results of the tests of our vehicles using the PCLLC mathematical corrections would be representative of same maneuver tests accomplished with a path following steering controller.

Ford's path following steering controller is not the same as the automated steering controller NHTSA used to obtain repeatable steering inputs for open-loop maneuvers. Ford's steering controller is designed to drive different vehicles in the same repeatable path although the steering inputs to guide the various vehicles along the same path may be quite different. It uses a real-time computer simulation of the vehicle steering responses and a differential GPS position signal as feedback signals for closed-loop control.

Unlike the other maneuver tests in NHTSA's evaluation, Ford's maneuvers are not intended to produce wheel lift or loss of control or invoke ESC operation. Ford suggests four lane change maneuvers (like those shown in Figure 9) varying in offset and length, each producing a maximum lateral acceleration of 0.7g at a single test speed of 45 mph, but varying in fundamental lateral acceleration frequency from 0.29 Hz to 0.40 Hz. The scoring metric is the maximum dynamic weight transfer measured as a 400 ms moving average. It refers to the percent reduction in vertical load for the two wheels on the side of the vehicle approaching tip-up. At tip-up, the dynamic weight transfer is 100 percent, but dynamic weight transfer in the range of 50 to 80 percent would be typical in the Ford maneuver. A lower percent weight transfer score indicates a vehicle with higher rollover resistance. The tests are performed with the vehicle loaded to the gross vehicle weight rating and the rear axle load at the rear axle weight rating.

Intrinsic advantages of this test method are its insensitivity to changes in pavement and tire friction because the tests are performed at lateral force levels below the friction limit and its continuous (as opposed to binary, tip-up or no tip-up) performance metric with a comparative score for all vehicles. Intrinsic disadvantages are its compression of vehicle differences as a result of tests restricted to a smaller range of lateral acceleration, the need for very accurate and repeatable vertical wheel force measurements to discriminate the compressed vehicle differences, and the question of whether non-limit dynamic tests can predict the comparative dynamic behavior of vehicles in limit maneuvers. Ford believes that non-limit results can be projected up to the limit, but it is certainly possible that anomalies in suspension behavior may occur only at the limit.

Suzuki commented that driving maneuver tests should not be used as NHTSA's dynamic rollover test because they measure only resistance to untripped rollover, are unrealistic driving maneuvers and have many practical problems. Suzuki argued that a dynamic tripped rollover test should be used instead. In November 2001, Suzuki and its contractor Exponent made a suggestion how a ''dynamic tripped rollover test'' could be conducted. The test would use a braked sled with the vehicle placed transversely on the sled adjacent to tripping curb. From a constant speed of 25 mph, the sled would be braked at a relatively constant deceleration which produces a steady lateral acceleration on the test vehicle. Repeated runs of the sled at incrementally higher levels of deceleration would be made until the vehicle lifts and rolls at least 20 degrees to a position restrained by safety straps. Such a test imposes a step increase of lateral acceleration on the vehicle and measures the result of weight transfer due to the static rigid body (SSF) properties of the vehicle, to the c.g. movement due to quasi-static body roll, and to the dynamic effects of roll inertia and suspension damping. This test is very similar to the ''straight tethered'' centrifuge test suggested by UMTRI in which the steady lateral acceleration imposed on the vehicle by the centrifuge is resisted by a tether until the tether is released and the vehicle experiences a step increase of lateral acceleration. Both are also analogous to a J-turn test with an extremely high level of tire adhesion.

Question 2: How should NHTSA address the problem of long term and short term variations in pavement friction in conducting comparative driving maneuver tests of vehicle rollover resistance for a continuing program of consumer information?

Comments: Toyota, D–C, and Ford addressed the question explicitly. Toyota had suggested a fishhook maneuver using the scoring metric LAR (lateral acceleration at roll). It believes that LAR is not very sensitive to changes in pavement friction, but if the pavement friction is too low it will become impossible for the vehicle to achieve sufficient lateral acceleration in the maneuver to reach LAR. Toyota also suggested a double lane change handling maneuver in which entry speed and peak to peak yaw rate were scoring metrics that it considers sensitive to pavement friction. It suggests strict limits on the course parameters to qualify the handling tests as valid, giving as an example the surface temperature limits (35C ± 10C) used by the Japanese government NCAP protocol for braking tests.

D–C suggested that a standard pavement friction monitoring trailer using a standard ASTM tire be used to define the nominal surface friction of a test track, and that at least five braking tests be conducted using the same anti-lock equipped vehicle with standard tires to qualify the surface before a test session. Limits for braking test measurements, temperature and wind velocity would be established to qualify the surface. VW made a similar recommendation of defined limits on temperature, humidity, wind speed and surface friction (presumably using a pavement friction monitoring trailer with a standard ASTM tire).

Ford explained that its test protocol for the double lane change maneuvers performed either by a path-following robot or by mathematical path-correction of driver-controlled tests calls for comparing the side to side load transfer at a standard 0.7g lateral acceleration. Since almost all vehicles can achieve this level of lateral acceleration on ordinary dry pavement despite expected fluctuations in surface friction, the test method is not sensitive to ordinary pavement friction fluctuations.

Likewise, fluctuations in pavement friction are not an issue for the centrifuge test suggested by UMTRI and the sled test suggested by Exponent/Suzuki because both tests use a curb-like structure rather than pavement friction to initiate an overturning moment.

Question 3: Some ESC systems presently have two functions. One is yaw stability which uses one or more brakes to keep the vehicle headed in the right direction in a limit maneuver, and the other is simple brake intervention in excess of the braking required for yaw stability. It is expected that the presence of a brake intervention function in ESC will have a large effect on the rating of vehicles because the average speed through a given test maneuver for vehicles having this function will be much less than for vehicles without it (even if equipped with ESC for yaw stability) under the usual test protocols of coasting through maneuvers and using the entry speed as the test speed. Is the value given to the brake intervention function of ESC as opposed to the yaw stability function by potential rollover rating tests commensurate with its safety value to consumers? Please provide all the data

and reasoning that support your view. Should NHTSA measure the vehicle speed at the completion of the maneuver as well as vehicle speed at entry?

Comments: Toyota commented that automatic braking in excess of what is required for yaw stability control to further lower the speed is a good strategy to mitigate harm in an emergency, but it recognizes NHTSA's concern that dynamic rollover tests could give the same credit to less sophisticated systems as to yaw control. Toyota believes that its suggestion of a separate handling test to accompany the dynamic rollover test would reward controllability and show the advantage of yaw control systems.

D–C commented that ESC should operate during rollover maneuver tests with entry speed being the only criterion for the stringency of the maneuver. The exit speed should not be considered.[3] Continental-Teves also commented that only the entry speed is an appropriate measure because it best defines the obstacle avoidance situation facing the driver.

TRW commented that ESC should be rewarded if it enhances roll dynamic behavior, and it also stated that ''Differential Braking Roll Prevention'' should be rewarded by the agency's rollover maneuver tests. It did not define the term ''Differential Braking Roll Prevention'', but we understand it to mean an automatic braking system in which selected brakes are applied for the purpose of reducing the lateral force generating capability of the selected tires rather than to augment yaw stability or to simply slow down.

Ford also opposed using the average speed through a given test as a criterion and pointed out that its recommended test does not use speed as a comparative metric at all. It also stated that its test is unlikely to invoke ESC but would measure the effect of active stabilizer bars and electronically controlled shocks.

Several other manufacturers share Ford's view that the operation of ESC is not essential to rollover resistance tests. GM suggested laboratory tests of rollover resistance using a centrifuge in which ESC would not operate. It stated that ''the rollover resistance of the underlying vehicle structure and suspension is a more important parameter than the possible use of ESC to mask poor rollover resistance of the foundation vehicle.'' Similarly, the recommendations from Suzuki and Exponent for a tripped rollover test do not involve the use of ESC. Honda suggested that if a vehicle is equipped with an on/off switch for ESC, it should be tested with the switch in the off position.

One of the agency's reasons for posing this question was that ESC systems with a component of ordinary four wheel braking above the differential braking for yaw control are performing a braking action that the driver is also likely to do in an emergency. However, the usual test protocol for the maneuver tests being evaluated requires the driver to coast rather than brake. Therefore, there was a question whether the potential advantage of vehicles with automatic braking tied to ESC would be unrealistically amplified by a test protocol that would prevent driver braking in circumstances where actual drivers would be likely to brake. Our concern over this theoretical problem has been reduced by our observations during the recent maneuver test research that vehicles tip up early in rollovers maneuvers minimizing the effect of automatic braking.

Question 4: If open-loop (defined steering input) maneuvers are used to determine whether a vehicle is susceptible to two wheel lift as a result of severe steering actions, superficial changes that reduce tire traction or otherwise reduce vehicle handling (but prevent wheel lift) would be rewarded the same as more fundamental or costly improvements. The same is true of closed loop (path following) maneuvers that use wheel lift as the sole criterion. Should measures of vehicle handling be reported so that consumers can be aware of possible trade-offs. What indicators of vehicles handling would be appropriate to measure, and how should this consumer information be reported?

Comments: Many commenters recommended handling tests either in addition to rollover resistance maneuver tests or instead of rollover resistance maneuver tests. Nissan had earlier recommended a fishhook maneuver test for rollover resistance and had proposed a method of timing the steering reversal to achieve maximum severity for each test vehicle. However, in its comments to the July notice, Nissan recommended that NHTSA measure handling rather than rollover resistance on the basis that the fishhook test may be too severe for the purposes of consumer information and that Nissan had no data regarding the correlation of fishhook test performance to real-world crashes. It suggested a steady state lateral acceleration test and a lateral transient response test. D–C addressed the question directly by stating that its recommended ISO 3388 PART 2 test does not give incentives for negative trade-offs but rather encourages optimized cornering capability and ''limit condition performance'' by giving lower ratings for ''bad handling''. In its recommendation of the ISO 3388 PART 2 test, Continental-Teves actually described it as a handling test.

The combination of a rollover test and a separate handling test was recommended by many commenters. Toyota suggested that a closed loop stability and controllability test should be combined with an open loop rollover resistance test to deal with the trade-off issue for rollover tests. It suggested using the ISO 3388 PART 2 test as a handling test with both entry speed and peak-to-peak yaw rate as performance criteria. The peak-to-peak yaw rate would reflect on the yaw stability of the vehicle. UMTRI suggested the centrifuge test for a rollover resistance but recommended adding a driving maneuver test to characterize yaw controllability. GM also recommended the centrifuge test, but suggested combining its results with a driving test of steady state maximum lateral acceleration to create a stability margin and set a lower limit for handling. In addition to static and dynamic rollover resistance tests, CU recommended a steady state lateral acceleration test on a skip pad and ''track-type tests to assess the vehicle's controllability, response and grip.'' VW also suggested static and dynamic rollover resistance tests , but called for a handling test that ''would give positive credit to ESP [ESC in generic parlance], since experience in Germany appears to substantiate the real world benefits of ESP. It did suggest a specific test, but tests of yaw stability would be expected to measure an aspect of handling benefited by ESC operation.

Question 5: What criteria should NHTSA use to select the best vehicle maneuver test for rollover resistance? Should the maneuver that has the greatest chance of producing two wheel lift in susceptible vehicles be chosen regardless of its resemblance to driving situations? Is it more important that the maneuver resemble an emergency maneuver that consumers can visualize? How important is objectivity and repeatability?

Comments: One issue is the potential conflict between the ability of a dynamic rollover test to produce tip-up in vulnerable vehicles (severity) and its resemblance to a driving maneuver consumers can imagine doing (face validity). Toyota commented that it

[3] NHTSA notes that if the stringency of a rollover maneuver test was determined by averaging the entry and exit speeds, a test in which the vehicle performed automatic braking would be considered less stringent than one in which the vehicle entered at the same speed and coasted through at a higher speed.

views severity as the more important property for a rollover resistance test and face validity as the more important property for a handling test. Ford and D–C took the opposite position. Ford stated that extreme maneuvers that cause two wheel lift of some vehicles on a paved road surface are unrelated to the vast majority of crashes. D–C said that resemblance to emergency maneuvers is more important than determining ''artificial conditions'' under which a particular vehicle is likely to roll over.

There were other comments about the general issue of criteria for selecting a rollover test. Continental-Teves stated that ''a dynamic test for vehicle rollover rating should assess whether the vehicle system (driver and vehicle) is capable of keeping the vehicle on the road'' which is consistent with the view that the ISO 3388 PART 2 test is more of a handling test than a rollover test. Advocates disagreed with NHTSA's conclusion that the TREAD Act called for a driving maneuver test as a rollover test, and suggested that UMTRI's ideas for a centrifuge test should be investigated. IIHS stated that ''although some of the test maneuvers may have considerably greater consumer face validity, the ultimate decision as to which maneuvers to use should rest on which provide the best correlation with real-world crash risk.''

Commenter's Recommended Approaches

D–C, Mitsubishi, VW, BMW and Continental-Teves recommended the ISO 3388 PART 2 closed-loop tight double lane change test as the best dynamic rollover test, but also described it as a handling test.

Toyota, Honda, CU, and TRW recommended Fishhook tests optimized in various ways to present the worst-case timing to each vehicle as the best dynamic rollover test. Nissan had recommended the Fishhook earlier but decided that the Fishhook test may be too severe for consumer information, and recommended handling tests instead of a rollover test.

UMTRI, GM, Advocates, CU and Honda recommended a centrifuge test as at least part of the rollover rating despite NHTSA's elimination of it from the research plan announced in July 2001.

Honda, CU, and VW suggested the combination of a rollover maneuver test and the centrifuge test or SSF for rollover ratings.

Toyota, UMTRI, Nissan, VW and Ford recommend a separate handling test distinct from the rollover rating with particular emphasis on yaw stability and ESC.

Suzuki and Ford recommended tests other than those discussed in the July 2001 Notice. Suzuki recommended a dynamic tripped rollover test such as the sled test described by Exponent. Ford recommended using a new path following steering controller instead of the PCLLC mathematical path correction technique it previously recommended, but it continued to recommend the maneuvers and performance metric used in the PCLLC.

NHTSA notes that although the Alliance criticized SSF for not measuring the effect of ESC, the tests recommended by Ford and GM do not measure the effect of ESC. Also, Honda recommended testing with ESC turned off if an on/off switch is provided.

V. National Academy of Sciences Study

In the conference report dated October 23, 2000 of the FY 2001 DOT Appropriation Act, Congress directed the agency to fund a National Academy of Sciences study on vehicle rollover ratings. The study topics were ''whether the static stability factor is a scientifically valid measurement that presents practical, useful information to the public including a comparison of the static stability factor test versus a test with rollover metrics based on dynamic driving conditions that may induce rollover events.'' The National Academy's report was completed and made publicly available on February 21, 2002.

The National Academy of Sciences made a number of findings and recommendations concerning NHTSA's present ratings of rollover resistance that we view as guidance for our efforts under the TREAD Act to improve the rating system.

Finding 1: Through a rigid-body model, SSF relates a vehicle's track width, T, and center of gravity height, H, to a clearly defined level of the sustained lateral acceleration that will result in the vehicle's rolling over. The rigid-body model is based on the laws of physics and captures important vehicle characteristics related to rollover.

Finding 2: Analysis of crash data reveals that, for higher-risk scenarios, SSF correlates significantly with a vehicle's involvement in single-vehicle rollovers, although driver behavior and driving environment also contribute. For these scenarios, the statistical trends in crash data and the underlying physics of rollover provide consistent insight: an increase in SSF reduces the likelihood of rollover.

Finding 3: Metrics derived from dynamic testing are needed to complement static measures, such as SSF, by providing information about vehicle handling characteristics that are important in determining whether a driver can avoid conditions leading to rollover.

The first three findings help resolve some very important questions facing NHTSA regarding the implementation of the TREAD Act to improve the rollover rating system. Namely, is SSF a scientifically valid measure of rollover resistance and should a dynamic rollover test replace SSF? The National Academy confirmed that SSF is a scientifically valid measure of rollover resistance for which the underlying physics and real-world crash data are consistent in the conclusion that an increase in SSF reduces the likelihood of rollover. It also found that dynamic tests should complement static measures, such as SSF, rather than replace them in consumer information on rollover resistance.

The National Academy's report describes a rollover crash as an event having three phases: A phase in which the driver is in control of the vehicle, a transition phase in which loss of control develops, and a phase in which the vehicle is out of control. The report gives SSF (along with the terrain) as the dominant determinants of rollover in the final, out of control phase, of a crash leading to rollover. It is in the previous transition phase of the crash that other vehicle properties reflected in the ideal dynamic test can potentially influence whether the crash enters the final phase in which only the geometric properties of the vehicle matter.

In its presentation to NHTSA of the findings and recommendations, the NAS study committee clarified that it envisions dynamic tests as limit maneuvers where loss of control and actual on-road vehicle tip-up can be expected for vulnerable vehicles. The NAS study panel also expressed a preference for combining static and dynamic vehicle information in a single rollover resistance rating, but it did not offer explicit suggestions for accomplishing the combination or conveying the rating to the consumer.

The next series of findings involve the statistical relationship between SSF and rollover rate that NHTSA uses to interpret the rollover resistance ratings.

Finding 4: NHTSA's implementation of an exponential statistical model lacks the confidence levels needed to permit discrimination among vehicles within a vehicle class with regard to differences in rollover risk.

Finding 5: The relationship between rollover risk and SSF can be estimated accurately with available crash data and software using a logit model. For the

analysis of rollover crash data, this model is more appropriate than an exponential model.

Finding 6: The approximation of the rollover curve with five discrete levels—corresponding to the five rating categories—is coarse and does not adequately convey the information provided by the available crash data, particularly at lower SSF values where the rollover curve is relatively steep.

NHTSA calculated what it believed was an accurate trend line between the rollover rate in single vehicle crashes and SSF using data from over 221,000 single vehicle crashes of 100 vehicle make/model/generations representing the range of SSFs and vehicle classes (cars, vans, pickup trucks and SUVs). It determined the average rollover rate for each of the 100 vehicles, corrected the rates for differences in demographic and road use variables (driver age, gender, alcohol use, road and weather conditions, etc) and performed a linear regression between SSF and the logarithm of the corrected average rollover rate of each vehicle. The NAS report refers to this approach as the exponential model because it creates an exponential regression line between SSF and rollover rate. NHTSA chose this approach because the exponential form of the regression line fits the rollover rate data well, and linear regression computes the R^2 goodness of fit statistic that is familiar to many scientific readers who are not professional statisticians. However, the standard statistical technique for determining the confidence limits of the regression line (which estimate how well the line would be replicated with another sample of crash data for the same vehicles) only considers a data set of 518 points. The 518 data points are the rollover rates in each of six states for those vehicles in the 100 make/model population for which more than 25 single vehicle crashes were reported. Consequently, the 95th percentile confidence limits computed for the exponential line are much larger than what would be expected for a data set of 221,000 points. This is the basis for Finding Number 4. Since each of the 518 data points on average represents 486 crashes, it stands to reason that the actual reproducibility of the line is much better than that computed on the basis of only 518 points. As the NAS study notes, the standard method of computing confidence limits for linear regression is the wrong method for our regression line, but it offered no other method of computing the confidence limits of our present model.

In Finding Number 5, the National Academy offered an alternative solution to the confidence limits issue. It recommended that the logit model be used in place of the exponential model (linear regression on the logarithm of rollover rate). The logit model operates on the 221,000 crash data samples individually rather than as 518 averages. Consequently, the confidence limits are extremely narrow as would be expected for a regression line representing a huge database. However, the change to logit model produces another problem. Each model incorporates an implicit assumption about the form of the regression line. We chose the exponential form because it appeared to follow the locus of data points. The form of the line produced by logit model in our application is closer to a straight line than to an exponential line. Consequently, it does not follow the locus of the raw data points as well. It appears to underestimate the rollover rate of vehicles at the low end of the SSF range by a substantial margin (36% versus about 45% @ SSF=1.00). The NAS study acknowledged this shortcoming and gives the example of a nonparametric-based rollover curve it calculated on a subset of NHTSA data that represents the low end of the SSF range much better than the logit curve. We are investigating non-parametric models and logit models using various transformations of SSF to develop a model combining the demonstrated tight confidence limits of the logit model with the more accurate estimate of rollover risk of our exponential model.

For the interpretation of vehicle measurements for consumer information on rollover risk, NAS concentrated exclusively on using statistical models relating measurements, such as SSF, to rollover risk in a single vehicle crash. Finding 5 concerns the choice of model within this methodology. Finding 6 suggests that a five interval system loses some of the power of the data to discriminate rollover risk between vehicles. The committee goes on to recommend that the agency look at a greater number of intervals or even a continuous risk scale.

Finding 7: A gap exists between recommended practices for the development of safety information and NHTSA's current process for identifying and meeting consumer needs for such information. In particular:

- The focus group studies used to develop the star rating system were limited in scope.
- The agency has not undertaken empirical studies to evaluate consumers' use of the rollover resistance rating system in making vehicle safety judgments or purchase decisions.

Focus group testing is the most appropriate tool we can use within our budget and time constraints. As mentioned in the response to Recommendation 3, below, we plan to use interviewing in conjunction with focus group testing to design second-tier information to be used by consumers who want more information than the star ratings. The agency has not undertaken empirical studies to evaluate consumer's use of the rollover rating system because the program was just initiated for the 2001 model year. Such a study would provide useful feedback for the development of additional consumer rollover information. However some history of use by the public needs to be acquired before the current system can be evaluated.

Recommendation 1: NHTSA should vigorously pursue its ongoing research on driving maneuver tests for rollover resistance, mandated under the TREAD Act, with the objective of developing one or more dynamic tests that can be used to assess transient vehicle behavior leading to rollover.

This notice describes the results of test program that is part of NHTSA's pursuit of the requirements of the TREAD Act to develop dynamic tests for rollover. We believe that the limit maneuver tests we are developing will provide the evaluation of the transient vehicle behavior that the NAS committee has recommended as a complement to the information from static measures. We also trying to develop tests of vehicle controllability to give consumers some information on the relative difficulty of keeping the vehicle on the road away from tripping mechanisms in the event of an emergency maneuver.

Recommendation 2: In the longer term, NHTSA should develop revised consumer information on rollover that incorporates the results of one or more dynamic tests on transient vehicle behavior to complement the information from static measures, such as SSF.

NHTSA will evaluate possible changes in its present consumer information on rollover resistance, based on SSF, as we develop the protocol for dynamic testing for rollover required by the TREAD Act. Part of our research planned for March to November 2002 will be to investigate the best way to present both static and dynamic information to consumers.

Recommendation 3: NHTSA should investigate alternative options for communicating information to the public on SSF and its relationship to rollover. In developing revised consumer information, NHTSA should:

• Use a logit model as a starting point for analysis of the relationship between rollover risk and SSF.

• Consider a higher-resolution representation of the relationship between rollover risk and SSF than is provided by the current five-star rating system.

• Continue to investigate presentation metrics other than stars.

• Provide consumers with more information placing rollover risk in the broader context of motor vehicle safety.

NHTSA is considering changing to a new model in conjunction with the incorporation of dynamic test results into the rollover resistance rating program. While the NAS prefers the logit model because it has tighter confidence bounds than the linear model we used, the logit model underestimates the risk of rollover for low-SSF vehicles. To attempt to overcome the drawbacks of both our original method and the logit model, while keeping tight confidence bounds, we will investigate the use of other statistical models to better estimate rollover risk in future model years at the same time that we improve our model to include dynamic test results.

The NAS committee stated that it believed that NHTSA had documented the relationship between SSF and rollover risk in single-vehicle crashes so well that we were short-changing the public by reducing this information to five star-rating levels.[4] The NAS committee recommended that we provide the public with additional rating levels in order to allow the public to better differentiate rollover risk between vehicles. The focus groups we conducted before implementing the current program indicated that consumers would prefer the five-star rating system. This star rating method is also consistent with the other parts of NCAP (frontal and side crash ratings). However, we will explore the use of greater differentiation of the data as well as alternative presentation formats in future consumer research. We will change our presentation of the second-level detailed information as soon as possible. We already provide the actual SSF number for each vehicle in NCAP in addition to the star rating, for those consumers who want more detailed information on the vehicles. This hierarchical approach was recommended in the 1996 NAS study, ''Shopping for Safety.'' We are considering refining this level of information by placing that SSF number in the context of all the other vehicles tested. We can also provide the public with the point estimate for the rollover risk associated with each value of the SSF using the logit curve. We will conduct interviews and focus groups this spring to determine the most effective way to communicate primary and secondary level information to consumers. Different communication methods may be developed for print and web site implementation.

We agree that providing more information about rollover risk in the context of overall motor vehicle risk would be useful information to consumers. The agency presently includes an explanation of rollover resistance ratings, how they were derived, and safe driving tips on its web site.

We intend to develop further consumer information on rollovers. In the short term, we are looking into providing consumers a better context for rollover risk by better describing the size of the rollover crash problem and its risk relative to other crash modes. In the long term, the agency is trying to develop a method of combining available information on the safety performance of each new vehicle model. The approach we are exploring uses the front, side, and rollover measures from NCAP combined with the safety benefits of rollover resistance and vehicle weight estimated from real-world crash data. We would like to combine the individual measures (for front, side, and rollover crashes) to reflect their relative frequency in the real world. However, a complete description of the safety of a new vehicle model should include the effect of that vehicle on other road users (including occupants of other vehicles on the road, pedestrians, and bicyclists). We are still performing research that will help us better understand the factors critical to vehicle aggressiveness and compatibility, and that will provide a basis for a comprehensive combined safety rating.

VI. Choice of Maneuvers for Rollover Resistance Tests

Appendix I describes the candidate vehicle maneuver tests evaluated as possible tests for dynamic rollover resistance and presents the results of our evaluation program. The research to evaluate potential maneuver tests for rollover is fully documented in the NHTSA technical report ''Another Experimental Examination of Selected Maneuvers That May Induce On-Road Untripped, Light Vehicle Rollover—Phase IV of NHTSA's Light Vehicle Rollover Research Program''.

Table 1 summarizes the observations in Appendix I about each of the nine Rollover Resistance maneuvers in the areas of Objectivity and Repeatability, Performability, Discriminatory Capability, and Realistic Appearance.

TABLE 1.—SUMMARY OF ROLLOVER RESISTANCE MANEUVER OBSERVATIONS

	NHTSA J-Turn	J-Turn with pulse braking	Fixed timing fish-hook	Roll rate feed-back fishhook	Nissan fishhook	Ford path cor-rected limit lane change	ISO 3888 part 2 double lane change	Consumers union short course double lane change	Open-loop pseu-do -double lane change
Objectivity and Repeatability.	Advantage	Advantage	Advantage	Advantage	Advantage	Disadvantage	Disadvantage	Disadvantage	Advantage
Performability	Advantage	Disadvantage	Advantage	Advantage	Disadvantage	Disadvantage	Advantage	Advantage	Disadvantage
Discriminatory Ca-pability.	Advantage*	Unacceptable	Advantage	Advantage	Advantage	Advantage	Unacceptable	Unacceptable	Unacceptable
Realistic Appear-ance.	Disadvantage	Disadvantage	Disadvantage	Disadvantage	Disadvantage	Advantage	Advantage	Advantage	Advantage

*When limited to vehicles with low rollover resistance and/or disadvantageous load condition.

A. Closed-Loop Driver Controlled Rollover Resistance Maneuvers

We continue to have substantial concerns about the use of maneuvers with driver generated steering inputs to develop NCAP rollover resistance ratings. Although fairly good driver-to-driver repeatability was seen during the Phase IV testing, this partially reflects the approximately equal skill levels of the test drivers. (This also partially reflects the small range of the rating metric, maneuver entrance speeds, that was seen.) A professional race driver

[4] Finding 3–5, ''The current practice of approximating the rollover curve with five discrete levels does not convey the richness of the information provided by available crash data.'' ''An Assessment of the National Highway Traffic Safety Administration's Rating System for Rollover Resistance,'' TRB NRC, prepublication copy February 21, 2002, page 3–27.

could probably drive cleanly through these maneuvers with higher entrance speeds. Conversely, an inexperienced driver who has never done any test driving could probably only manage lower speeds. We remain concerned that ratings generated with a driver-closed steering loop maneuver might not be fair or helpful to consumers if this year's test driver were not as good as last year's or the test driver was having an off day when a particular make-model was tested.

A further problem for maneuvers with driver generated steering inputs is that of ''clean'' (none of the cones delimiting the maneuver's course were bypassed or struck) versus ''not clean'' runs. Only for a ''clean'' run do we know that the driver actually drove the prescribed maneuver. If the vehicle during a run bypasses or hits one or more of the delimiting cones, then there is no way to ensure that the driver was actually trying to steer the prescribed course. To give two extreme examples, a test driver could drive through the ISO 3888 Part 2 Double Lane Change at a very high speed without a chance of two-wheel lift occurring by going straight. Or, at the same speed, he could achieve two-wheel lift by performing a fishhook maneuver. For either case, a ''not clean'' run would be recorded.

It is extremely difficult to generate two-wheel lift while having a ''clean'' run. While Consumers Union has stated that on a rare occasion it managed to achieve two-wheel lift in a ''clean'' run, in general, two-wheel lift will result in the vehicle not following the prescribed course. Therefore, we must use maximum maneuver entrance speed for a ''clean'' run as the rating metric instead of the more directly rollover related metric of when two-wheel lift first occurs. The relationship between maximum maneuver entrance speed and rollover resistance is not known.

Although all Rollover Resistance maneuvers are influenced by both a vehicle's handling characteristics and its resistance to tip-up, it appears that handling dominates the Double Lane Change maneuvers but is less important for the J-Turn and Fishhook maneuvers. The Double Lane Change maneuvers are better for studying emergency vehicle handling than rollover resistance. Clean runs of the CU and ISO 3388 tests are not limit maneuvers in the sense of the J-Turn and Fishhook because they cannot measure tip-up after the vehicle's direction control is lost.

One way to characterize maneuvers is by the number of major steering movements they involve. The J-Turn has just one major steering movement, the initial steer. A Fishhook has two major steering movements, the initial steer and the countersteer. As shown by Figures 11 and 14, a Double Lane Change has four major steering movements, the initial lane change steer, the second lane change steer, the recovery steer, and the stabilization steer, plus some minor steering movements. We believe that these additional major steering movements increase the influence of handling for Double Lane Change results compared to J-Turn and Fishhook maneuvers.

During the Phase IV Rollover Research there were a number of ''not clean'' runs of the CU Double Lane Change maneuver that resulted in two-wheel lift. These two-wheel lifts always occurred just after the completion of the second major steering movement, well before the third. In other words, the two-wheel lifts occurred while the Double Lane Change and Fishhook steering inputs were still similar and not after they had diverged. No two-wheel lifts in Double Lane Change maneuvers were seen after the third major steering movement. We believe that by the time of the third major steering movement, the severity of the steering has caused sufficient speed to be scrubbed-off to make two-wheel lifts at this point in the maneuver very unlikely.

Double lane change maneuvers scored on the basis of highest ''clean'' run speed had no value as dynamic tests of rollover resistance. For our sample of test vehicles, there was actually an inverse relationship between double lane change speed scores and the incidence of tip-up in more severe maneuvers that induced tip-up. The test vehicle that tipped-up the most often in other maneuvers and at a consistently lower tip-up speed than other test vehicles would be rated the best vehicle for rollover resistance by the CU Short Course or ISO 3888 Part 2 double lane change on the basis of maximum clean run speed. These tests measure a type of handling performance but do not measure rollover resistance.

B. Sub-Limit Maneuvers Measuring Dynamic Weight Transfer

Ford suggested two methods of implementing the same idea. It first suggested the Path Corrected Limit Lane Change method in which vertical wheel force measurements made in driver controlled runs over a number of nominal double lane change paths are corrected mathematically for variations due to the vehicle's departure from the ideal path. Appendix I reported the results of a demonstration of this method in which Ford assisted NHTSA in performing the test runs, and Ford performed the mathematical corrections and calculated the Dynamic Weight Transfer Metric (DWTM) for each of our test vehicles. In its subsequent comments to the docket, Ford announced that it had developed an advanced path following robot that could drive each test vehicle repeatably through the ideal path directly, eliminating the need for mathematical path correction. Ford expected both implementations to produce the same DWTM for a given vehicle, and the following remarks address both implementations.

Four double lane change courses are run at 45 mph. They are each designed to produce a maximum lateral acceleration of 0.7g, but at a different frequency of motion due to their different combinations of length and offset. The performance metric for each test vehicle is highest dynamic weight transfer produced by any of the four double lane change courses.

Ford's use of the double lane change is much more relevant to rollover resistance than the ISO 3888 or Consumers Union double lane change tests described above. Dynamic weight transfer is the mechanism that leads to tip-up. However, the Ford test is not a limit maneuver. It will not cause vehicles to tip-up, lose control, or even invoke ESC in most instances. From a theoretical point of view, this is the source of its greatest advantage and greatest limitation. Running the tests at sub-limit 0.7g lateral acceleration is a great advantage because any reasonable concrete or asphalt pavement should supply sufficient traction. It should eliminate concern about pavement traction variation at a designated test location, and even permit comparable tests at different locations. It should also eliminate the possibility of tire debeading during test conditions. However, sub-limit tests require that the comparison of dynamic performance between vehicles be extrapolated from a test condition that does not cause control problems to the extreme conditions that may actually produce rollover. Suspension effects that may be important at tip-up would not necessarily appear at the sub-limit test condition. While the swing-axle suspension design is not in current use, it offers a clear example of the theoretical problem of sub-limit tests. If a rear swing-axle vehicle enjoys a DWTM advantage over a vehicle with a beam rear axle at a sub-limit condition, it is easy to see how that advantage may not extrapolate to a limit condition where weight jacking and severe positive camber angles associated with swing-axle suspension manifest themselves.

Sub-limit maneuver testing also may not predict vehicle rollover resistance at limit conditions. It is unclear how great a practical limitation on rollover resistance testing is presented by the inability of sub-limit tests to measure anomalies in suspension behavior that may occur only in limit conditions. However, in the case of the Ford test, the evaluation of the results for our test vehicles shows other practical limitations that are certainly important. We included the 2WD Chevrolet Blazer and the 4WD Ford Escape among our test vehicles because they represented a large difference in static stability factor (0.21) within the SUV class. In every test maneuver that produced tip-up and in all load conditions, the Blazer had the worst performance and the Escape had the best. Under the PCLLC method, the Mercedes ML320 with ESC enabled performed worse than the Blazer and significantly worse than the performance of the same ML320 with the ESC disabled. Since no other test showed a loss of rollover resistance due to the operation of ESC, we conclude that there was an error in the PCLLC method for this vehicle. Aside from the ML320 with ESC, the Blazer and Escape set the performance range among our test vehicles in the Ford test as well. However, the standard deviation of DTWM measurement is so large in comparison to the range of differences in DTWM between vehicles, that the large difference in rollover resistance between the 2WD Blazer and the 4WD Escape barely attains statistical significance. Aside from the erroneous result for the ML320s with ESC, none of the other differences in DTWM between test vehicles were statistically distinguishable from random measurement variation. The measurement repeatability of the present form of the Ford test makes it not suitable for comparisons of vehicles within a class. The measurement variation of DWTM relative to the range of values across vehicle population is at least 20 times that of SSF measurements.

A surprising limitation of the Ford test was that there was no discernable dynamic weight transfer component in the measured Dynamic Weight Transfer Metric. Except for the measurement of the ML320 with ESC that we consider erroneous, the ''dynamic'' weight transfer measurements were not different from the quasi-static weight transfer calculated from c.g height, track width, and an allowance for steady state body roll. This suggests that the same weight transfer would be measured if the vehicle were simply driven in a circle at 0.7g lateral acceleration.

The centrifuge is a theoretically ideal way to make the same measurement. The weight transfer measurement could be made by placing the vehicle on stationary scales on the centrifuge platform. Stationary scales are a much more accurate way of measuring vertical load than the method used in the Ford test. Both the PCLLC method and the path-following robot method of Ford's test rely on measurements of axle height and camber relative to the road to deduce vertical loads from separate studies of tire deflection versus vertical and lateral loads and camber angle. The centrifuge test could directly measure quasi-static weight transfer at 0.7g, but it could also measure the lateral acceleration at tip-up for each vehicle which would increase the measurement range across the population of vehicles. We expect that the repeatability of centrifuge measurements would approach that of SSF measurements, and Section VIII describes our plans to investigate the potential of centrifuge testing. The ''straight tether release'' method of centrifuge testing suggested by UMTRI also provides for a dynamic component of load transfer that can be measured under laboratory conditions. It is identical in concept to the sled tests for tripped rollover suggested by Exponent.

Although Ford's PCLLC test produces results that are more quasi-static than dynamic, rollover resistance ratings based on quasi-static load transfer are useful if measured precisely, and they are likely to correlate very well with real-world crash statistics. However, only true limit maneuver tests measure the effects of ESC and potential anomalies in suspension behavior on rollover resistance. Unfortunately, limit maneuver tests are affected by pavement friction to a much greater degree than Ford's test or centrifuge tests that do not involve pavement friction. We do not expect pavement effects to be an insurmountable obstacle to practical limit maneuver tests, but should that occur, we believe that the centrifuge test has a great advantage in precision, simplicity, and cost of operation over the PCLLC method while sharing its advantage of pavement insensitivity.

C. Choice of the Fishhook Test With Roll Rate Feedback and the J–Turn as an Effective Pair of Dynamic Rollover Resistance Test Maneuvers

The fishhook and J-turn maneuvers turned out to be the only true limit maneuvers in the test program. Unlike the other maneuvers they were capable of causing tip-up in vehicles susceptible to on-road untripped rollover. They were able to detect an increase in resistance to on-road untripped rollover as a result of ESC operation, and they place the vehicle in a circumstance where anomalies in suspension behavior will manifest themselves. They were very objective and repeatable because they were performed using a steering controller. We estimate that the speed at tip-up is repeatable within 2 mph on the same surface. A test performance criterion of tip-up or no tip-up would be absolutely repeatable except for vehicles with a tip-up speed within 2 mph of the maneuver cut-off speed set by safety concern for test drivers. We are examining the repeatability of limit maneuver tests on different pavements and in different seasonal conditions on the same pavement.

Our reasons for not choosing a Double Lane Change maneuver are summarized in Table 1, discussed in Appendix I of this notice and further clarified in subsections A and B above. However, to briefly repeat, our primary concerns with the Double Lane Change maneuvers are: (a) The Ford version appears to be a very complex and expensive way of measuring quasi-static load transfer with poor measurement precision; also it does not measure ESC effects or anomalies in suspension behavior at the limit; and (b) the ISO 3388 and CU Short Course simply do not measure rollover resistance under the performance criteria of maximum entry speed of a clean run, nor are they limit tests.

Table 1 summarizes the observations that point to the Fishhook maneuver as the best choice for a dynamic rollover resistance test maneuver. We prefer the Roll Rate Feedback Fishhook to the Fixed Timing Fishhook because roll rate feedback feature adapts the timing of steering to characteristics of the vehicle being tested. This feature resolves long-standing criticism of double lane change maneuvers for rollover testing that the inherent timing of the course could favor the frequency response of some vehicles over others. (The Ford test used a variety of double lane change courses to address the same issue.) The Nissan Fishhook also contains a procedure to adjust the steering timing to the vehicle characteristic, but it is a more difficult test to perform than is the automated Roll Rate Feedback Fishhook maneuver.

One of the problems with using the Roll Rate Feedback Fishhook (or any other Fishhook) maneuver for consumer information is that Fishhook does not give people an understanding as to how this maneuver occurs during driving. To help people understand this test, we

have decided to rename Fishhook maneuvers (all variants) as Road Edge Recovery Maneuvers. The Roll Rate Feedback Fishhook will be renamed the NHTSA Road Edge Recovery Maneuver.

NHTSA analyses of crash databases have found that the most common scenario leading to untripped rollover is road edge recovery. This scenario begins with the vehicle dropping two wheels off the right edge of the paved roadway onto an unpaved shoulder. The reasons for this occurring include, among others, driver inattention, distraction and fatigue. The driver attempts to regain the paved roadway by steering to the left. Due to the lip between the pavement and the shoulder, a substantial steer angle is required to start the vehicle moving to the left. However, once the vehicle overcomes the lip and starts moving, it quickly threatens to depart from the left side of the road. Therefore, the driver rapidly countersteers to the right. This pattern of steering during a road edge recovery was discovered during research done by the Texas Transportation Institute.[5]

The similarity between the characteristic pattern of steering used by drivers during a road edge recovery and a fishhook maneuver is apparent. We note that fishhook maneuvers do not simulate the lip between the pavement and the shoulder. However, we do not believe that this matters since the effects of this lip occur at the very beginning of the maneuver, well before the vehicle is likely to have two-wheel lift.

The NHTSA J-Turn maneuver (without pulse braking) was the easiest limit maneuver to perform repeatably and objectively. However, it was not chosen as a stand-alone dynamic rollover resistance test because it is not severe enough. While our research has shown that the J-Turn can discriminate between vehicles that have a low rollover resistance, J-Turns generally do not induce tip-up for modern production vehicles loaded only with a driver and instrumentation. Fishhook maneuvers induce two-wheel lifts for more production vehicles.

The discriminatory power of the dynamic rollover test program will be maximized by having test maneuvers with different levels of stringency rather than just a single maneuver with tip-up speed as the only metric. The NHTSA J-Turn is our choice for a lower severity dynamic rollover resistance test maneuver. We have selected it because it has excellent objectivity and repeatability, is easy to perform, and has a well worked out test procedure. Having only a single major steering movement, it is a logical step down from the Fishhook. This maneuver has a long history of industry use. During NHTSA's discussions with the automotive industry, every manufacturer stated that they routinely perform J-Turn testing during vehicle development.

Another way to increase the range of test severity is by testing vehicles in different load conditions. Ford suggested using the PCLLC tests with vehicles loaded to their Gross Vehicle Weight Rating with the rear axle carrying its maximum rated load. The tests described in this notice used a roof load as a second load configuration. The rating system alternatives described in the next section presume that the vehicles will be tested in two load conditions. We have tentatively decided that the light load condition will be just the driver and instruments and that the heavy load condition will be the equivalent of fiftieth percentile male dummies in all seating positions. Thus, we will test in four levels of stringency: J-turn with light and heavy loads; and Roll Rate Feedback Fishhook with light and heavy loads. The J-turn with light load is the least stringent, and the Fishhook with heavy load is the most stringent. The rating example in the next section assumes only four binary dynamic performance variables, namely did it tip-up or not in each of the four maneuver/load combinations. The speed at tip-up will be available as another level of stringency, but it is not clear whether it will be needed. A greater number of dynamic variables may not further improve the fit of the statistical model.

VII. Proposed Rollover Resistance Rating Alternatives

While many commenters suggested or supported specific dynamic rollover tests, only two of them made suggestions about how to use the results of dynamic rollover tests in ratings of rollover resistance. GM defined minimum levels of performance for the centrifuge tip-up test, the constant radius driving maneuver test of maximum lateral acceleration, and the stability margin which is the difference between centrifuge test result and the constant radius maneuver test result. A vehicle meeting all three minimum levels of performance would be rated 2 stars. It also defined a single higher ''bonus star'' level for each of the three performance criteria, making it possible to rate up to 3 bonus stars for total rating of 5 stars. Toyota presented an example of a range of Lateral Acceleration for Rollover (LAR) in a fishhook maneuver (with pulse braking if necessary) for a number of hypothetical vehicles divided into 5 star levels of increasing LAR, noting that the actual star levels should be determined ''through NHTSA testing/data analysis.'' GM's suggestion is based on the idea of being directionally correct—a vehicle with better rollover stability attributes should earn a higher rating. Toyota's example is based on directional correctness as a minimum; it is unclear whether its reference to NHTSA data analysis refers to the analysis of test data to determine the likely extremes of LAR or to the analysis of rollover statistics for vehicles of known LAR.

NHTSA's present rollover resistance ratings based on SSF are interpreted in terms of a predicted rollover rate for the vehicle if it is involved in a single vehicle crash. This goes far beyond the GM-suggested minimum quality of directional correctness for a rating system. The NAS study strongly supported the use of SSF to predict rollover rate as long as the model relating SSF and rollover risk could be demonstrated to be repeatable across data sets (shown by a tight confidence limits about the regression line). While the logit model underestimates the rollover risk of vehicles with very low SSF, its tight confidence limits can be calculated by standard statistical software, and NAS concluded that the repeatability of the model would support the discrimination of more than 5 levels of rollover resistance for light vehicles.

Should Rollover Resistance Be Rated Using Dynamic Maneuver Tests Alone?

The requirements of the TREAD Act refer only to a ''dynamic test on rollovers'' and are silent about rollover resistance information derived from static measures. However, the NAS study of the present rollover rating system recommended that ''NHTSA should vigorously pursue the development of dynamic testing to *supplement* the information provided by SSF'' [emphasis added]. NAS did not suggest that any combination of dynamic tests alone was sufficient for consumer information on rollover resistance, and its report explained that in the final out-of-control phase of a rollover crash ''SSF and the terrain over which the vehicle is moving are the dominant determinants of whether rollover will occur.''

NHTSA agrees that the dynamic tests should supplement rather than replace the static measures for the reasons given by NAS, but also because ratings

[5] Ivey, D.L., Sicking, D.L., ''Influence of Pavement Edge and Shoulder Characteristics on Vehicle Handling and Stability,'' Transportation Research Record 1084.

derived only from dynamic driving maneuver tests would severely limit the scope of the consumer information. The terrain over which dynamic driving maneuver tests for rollover take place is smooth dry pavement, but the vast majority of rollovers take place on terrain that includes soft soil, curbs and other objects that can place higher tripping forces on the vehicle than can tire/pavement friction. There are a number of vehicle design strategies for preventing tip-up in maneuver tests. Those that involve lowering the center of gravity of the vehicle, increasing its track width or reducing body sway would be expected to increase the vehicle's general rollover resistance both on-road and in the event of contact with a curb, soft soil or other tripping mechanism.

There are also a number of vehicle design strategies to prevent tip-up in maneuver tests that involve reducing the lateral tire/pavement friction. These strategies range from simply using low traction tires to sophisticated ''rollover prevention'' systems that can apply one or more brakes in response to sensing a potential rollover situation. When a tire is subjected to heavy braking, its capacity for lateral traction is greatly reduced. This principle can be used to cause the vehicle to skid rather than tip-up under control of a ''rollover prevention'' system (that uses the brake intervention capability of ESC under control of a tip-up sensing rather than yaw sensing computer program). Design strategies that depend on the active or passive management of tire traction can be effective in reducing the risk of a vehicle rolling over on the road where tire traction matters. However, the on-road untripped rollover is a special and limited case of rollover crash; most rollovers are initiated by a tripping mechanism other than tire traction. NAS found that dynamic maneuver tests for rollover are important because they are sensitive to vehicle properties that are not reflected in static measures of rollover resistance. But, a dynamic maneuver test *alone* can only assure the measured level of rollover resistance in the case of on-road untripped rollover because tip-up in the dynamic test can be prevented by tire traction management strategies that have no effect when a tripping mechanism (other than tire traction) initiates the rollover. Using dynamic maneuver tests to supplement the information on rollover resistance obtained from static measurements represents a potential improvement in consumer information, but the use of dynamic maneuver tests alone would result in rollover resistance ratings that may not apply to the most common type of real-world rollover crash in which the vehicle strikes a tripping mechanism. That would significantly reduce the correlation of rollover resistance ratings to real-world rollover crashes.

Rollover Resistance Ratings Based on Both Static Measures and Dynamic Maneuver Tests

Alternative 1—Combine Static and Dynamic Vehicle Measurement in a Statistical Model of Rollover Risk

The ideal rollover resistance rating system would give consumers information on the risk of rollover in a single vehicle crash taking into account both the static properties of a vehicle and its performance in dynamic maneuver tests. The risk based system is better than a system that is merely directionally correct. In addition to answering the question ''is the rollover risk lower for vehicle A or vehicle B?'', it can answer also the questions, ''how much lower?'' and ''what is the absolute risk?''.

The present rollover resistance ratings are based on a statistical model that considers about 221,000 single vehicle crashes of 100 popular make/model vehicles for which we have SSF measurements. In addition, each state accident report provides a number of driver demographic variables (sex, age, sobriety), road characteristic variables (speed limit, hill, curve, slippery surface), and weather variables (storm, darkness). A statistical model can use the real-world crash data to determine the effect of any variable on the proportion of single vehicle crashes that result in rollover (rollover risk) in the presence of other variables that may also exert an influence. In the present case, the only vehicle variable is SSF, and the model predicts the risk of rollover as a function of SSF in the presence of the many combinations of confounding variables in the data sample of 221,000 crashes. The predicted rollover risk of a vehicle in a single vehicle crash, based on its SSF, becomes its rollover resistance rating which is expressed in five discrete levels (less than 10%, 10% to 20%, 20% to 30%, 30% to 40%, more than 40%) designated by one to five stars.

As mentioned previously, the NAS recommended that we use a logistic regression model instead of the linear regression model in order to establish tight confidence limits on the repeatability of the model, and it found that the differences of rollover risk between vehicles predicted by the statistical model were significant enough to support more than five discrete levels. Also, the NAS study recommended that NHTSA develop a risk model that combines the SSF measurement with the results of one or more dynamic maneuver tests for a more robust consumer information rating on rollover resistance.

The NAS study was not concerned with the distinction between tripped and untripped rollovers because it is the magnitude and duration of the forces that cause rollover in all circumstances. NHTSA has considered the distinction between tripped and untripped rollovers important in making a choice between a road maneuver test or a general rollover resistance indicator metric like SSF for consumer information because tripped rollovers are much more common occurrences. However, the NAS recommendation of including both SSF and road maneuver test results in a risk model makes the distinction between tripped and untripped rollovers unnecessary. The recommendation does not require a choice between the two types of rollover resistance measures because both are included. Also, the risk model will be calculated using all available rollover data including tripped and untripped rollovers from several states for a number of vehicles that we will test using J-Turn and Fishhook maneuvers and measure for SSF. The predictive power of both SSF and road maneuver tests determined by real-world data will be reflected in the risk model.

We plan to conduct dynamic rollover tests of various levels of stringency. The J-turn maneuver with a driver and instruments (light load configuration) is the least stringent. It would be rare for this maneuver to cause tip-up of a modern vehicle. The same J-turn test performed with a passenger load in every seating position (heavy load configuration) is a more stringent test that is likely to cause tip-up for a few vehicles. The Fishhook test with roll rate feedback is more stringent than the J-turn test because it includes a steering reversal designed to occur at the least favorable instant for each vehicle. It would also be performed in both light and heavy vehicle load configurations for a total of four levels of test stringency. Each maneuver is repeated in a series of increasing speeds until it tips-up or reaches the maximum test speed. The speed at tip-up offers a discriminator within each stringency level if needed.

We believe that this suite of dynamic rollover tests will identify vehicles vulnerable to rolling over without the presence of a tripping mechanism, and identify a relative rank order of vehicles

regarding this vulnerability. However, the vehicle's rank order alone does not predict the rollover risk associated with its level of vulnerability to tip-up in dynamic rollover tests. Also, the dynamic test program is not expected to distinguish between vehicles having an SSF of about 1.2 or greater because they are unlikely to tip-up in any dynamic maneuver test for rollover. This expectation is based upon NHTSA's rollover maneuver research from 1997 to present.

Combining the dynamic rollover test results with SSF in a risk model should overcome the limitations discussed above. Consider two vehicles with a similar SSF. If one vehicle tips up during dynamic rollover tests but the second does not, we would expect this advantage to manifest itself in the rollover crash statistics of real vehicles. Likewise, a vehicle that tips-up only in high severity maneuvers should have better real-world performance than a vehicle of similar SSF that tips up in lower severity maneuvers as well. Even if the real-world reduction in rollover risk associated with better dynamic maneuver test performance proves to not be large, it is certainly reasonable to expect it to affect the statistical risk model when it is entered along with SSF as one or more additional vehicle variables.

The logistic regression model recommended by NAS (referred to as the logit model) gives an example of how the dynamic and static information could be combined in a risk model. As presented in the NAS report, the model operated on three driver description variables, four road description variables, two weather variables, but only one vehicle variable. There is no obvious reason why the same model could not operate on additional vehicle variables. While we are particularly interested in differences in rollover risk between vehicles with different dynamic test performance but similar SSF, we recognize that dynamic test results and SSF are not independent variables. But some of the variables describing the driver, road and weather also were not independent. The hypothetical exercise described below seems to confirm that logistic regression can use interrelated variables without difficulty.

The data base we have used to construct linear and logistic regression models for the existing rating program and to assist NAS in its study of rollover ratings contains the state crash data for 100 vehicle make/models and their SSF measurements, but we do not have dynamic maneuver test results for these vehicles. In order to evaluate the logistic regression process when dynamic test results as well as SSF are used as vehicle variables, we selected 25 vehicles from our 100 vehicle data base and tried to estimate their probable dynamic maneuver test results based on previous dynamic tests of similar make/models. In the absence of real test results these hypothetical maneuver test results allowed us to use the logistic regression software with vehicle multiple variables. The hypothetical dynamic maneuver test results were in the form of 4 binary (yes/no) variables representing whether the vehicle would tip-up in the four maneuver tests of differing stringency (J-turn/light load, J-turn/heavy load, Fishhook/light load, Fishhook/heavy load). The possible sub-levels of performance defined by test speed at tip-up were not used. The data base included about 88,000 single vehicle crashes of the 25 vehicle make/models with the real driver, road, weather and SSF data, but only our estimates for dynamic ''data'.

First, logistic regression was performed with SSF as the only vehicle variable. The result is presented by the dashed line in Figure 1. It is essentially identical to the result of the ''logit model'' recommended by NAS that was constructed using a 221,000 crash data base of which the 88,000 crashes are a subset. The similarity of the results is consistent with the finding of very tight confidence limits for the model.

Next, the logistic regression was repeated using the hypothetical dynamic maneuver test results in addition to SSF as vehicle variables. The points on the graph are the predicted rollover rates for each of the 25 vehicles considering both its static and dynamic measurements under the mean distribution of the driver, road and weather variables. The locus of points generally follows the line predicted by SSF alone but shows differences in predicted rollover rates as a result of hypothetical dynamic test performance, especially at the low end of the SSF range. We estimated in the hypothetical dynamic maneuver test results that, with one exception, none of the vehicles with an SSF greater than 1.17 would tip up in even our most severe dynamic maneuver test. However, even if a vehicle does not tip-up in our maneuver tests, its risk of rollover is not zero, and it is strongly related to SSF as shown in the model. The model also allows for the possibility that vehicles with the same SSF may have significant differences in dynamic test results that influence the real rollover risk. These are the characteristics we expect in a reasonable risk model. While this preliminary investigation of logistic regression as a means to combine static and dynamic measurements is encouraging, NHTSA will continue to examine the theoretical soundness and confidence limits of the model in keeping with the recommendations of NAS.[6]

The relative value of static versus dynamic measurements for determining the rollover resistance of vehicles is a significant question. Certainly, the use of both types of information to determine rollover resistance should lead to the most accurate information, but one must determine the relative weighting of the static and dynamic measurements. The combination of the static and dynamic information in a statistical model of rollover risk is an objective way to let real-world crash data determine the weighting that best represents the outcomes of crashes. Besides providing the best rollover risk estimates, the statistical model also has the advantage of not requiring judgments about appropriate data weighting from NHTSA or any of the interested parties. Regardless of the rating method, the NCAP program will make available the test results for SSF and for each of the dynamic maneuver

[6] We noted that the predicted rollover risk of vehicles at the low end of the SSF range in Figure 1 was considerably larger for the model including dynamic maneuver results than for the logistic model using SSF only. This is due in part to an apparent limitation in the form of the risk prediction curve with a single independent variable inherent to the basic logistic regression procedure that prevents the line from having sufficient curvature to follow the trend in rollover risk versus SSF in the data set presented to the model. The exponential risk curve upon which our current SSF rollover resistance ratings are based agrees more closely with the logistic model operating on both the SSF and the hypothetical dynamic maneuver tests. Our current rating system also agrees more closely with the actual rollover rates of vehicles than does the basic logistic regression procedure operating on SSF alone. We expect to overcome the limitation in the form of the risk prediction curve of the logistic regression model operating on SSF alone by using transformations of SSF (log(SSF) for example) as the vehicle variable. Once we have achieved a model with the goodness of fit of our current exponential model and the narrow confidence limits of the logistic model recommended by NAS, we can add the dynamic maneuver test results with the certainty that we are refining the risk prediction rather than compensating for the deficiencies of the base model. In the example of Figure 1, we would not expect much change in the points representing the risk predictions of the 25 vehicle with both SSF and dynamic maneuver test results. The use of multiple variables tends to free the model of the restrictions in form that are otherwise manifested in a single variable model by the need to represent an exponential risk relationship by single continuous line with a large change in curvature in our data range. However, we would expect the line representing an improved logistic model with SSF only to conform more closely to the actual vehicle rollover rates, and we would expect the spread between the SSF line and the vehicle points to represent only the effect of the dynamic performance of the vehicle.

tests, so that consumers can see the basis of our rating and exercise their own judgments about their particular concerns.

However, this method of rollover resistance rating has some drawbacks. Dynamic maneuver test results for vehicles with large samples of single vehicle crash data are needed to compute a robust risk model. In order to use dynamic test results in risk-based ratings, NHTSA must first test a number of older vehicles to correlate the combined vehicle information of dynamic test performance and SSF to rollover rate using a large crash database. Eventually the NCAP test results will supply the risk model with vehicle information, but sufficient corresponding crash data will trail the vehicle measurements by at least four years. State accident records are reported to NHTSA yearly, but they lag by about two model years. Even a high production vehicle requires about two years of exposure to accumulate sufficient single vehicle crash data in the few states with reliable reporting of both vehicle identification and rollover crashes. Consequently, it will be a number of years before the effects on rollover rate of traction management strategies and other technologies that improve dynamic maneuver test results are represented directly in the risk model. In the mean time, vehicle characteristics that improve rollover resistance only in the special case of on-road untripped rollover may be overvalued in the risk model in comparison to vehicle characteristics that improve resistance to both untripped and tripped rollover.

Critics of the SSF-based rating system may view the combination of dynamic and static measurements in a risk model as an attempt by NHTSA to devalue the dynamic tests. That is not the case.[7] It is true that SSF is a strong predictor of the risk of rollover especially in a tripping situation and that most rollovers are tripped. Consequently, we expect SSF to have a strong effect in a risk model even when dynamic test variables are also included. However, the strong effect of SSF is not likely to diminish the differences in rollover rate predicted for difference in dynamic performance. We note that the example of Figure 1 is based only on estimates of dynamic test performance. We will not know until we have actual dynamic test results for some of the 100 vehicles in our 221,000 crash database whether the effect of dynamic test performance on the rollover risk model is as great as expected.

Alternative 2: Separate Ratings for Dynamic Rollover Test Results and Static Vehicle Measurements

An alternative rating system is proposed to address concerns that combining the dynamic and static information in a risk model could give the dynamic tests less influence than concerned parties would prefer. It is based on the idea that the dynamic rollover maneuver tests are a direct representation of an on-road untripped rollover. Therefore, the dynamic test results may be reported separately as ratings of resistance to untripped rollover. Likewise, the SSF measurements would be presented separately as ratings of resistance to tripped rollover.

We believe that the vast majority of the rollovers in our 221,000 single vehicle crash database are tripped rollovers. However, it is impossible to identify those that may be untripped because state accident reports are not concerned with that level of detail. About 95 percent of the small number of rollover crashes investigated directly by NHTSA in great detail (the NASS–CDS program) were tripped. Assuming a similar distribution of tripped and untripped rollovers, our large database is a suitable basis for a risk model of tripped rollover using SSF. The tripped rollover risk predictions would be the same as the present risk predictions except for the changes in statistical methodology recommended by NAS.

Unfortunately, the NASS–CDS database receives reports of only about 10 untripped rollovers (and about 200 tripped rollovers) a year, precluding any possibility of risk prediction on a make/model basis for untripped rollover. Ratings of resistance to untripped rollover would have to be based simply on the principal of directional correctness. For instance, a vehicle that did not tip-up in any maneuver at any load condition would be rated ''A''; a vehicle that would tip-up in a maneuver test only when loaded at every seating position would be rated ''B''; and a vehicle that would tip-up in a maneuver test even in the lightly loaded condition would be rated ''C''.

This rating system also has some disadvantages. The use of two sets of ratings about the same general type of crash would be difficult to communicate effectively to consumers. It will also be hard to explain to consumers why the SSF rating may be expressed in terms of risk but not the dynamic rating. Since the only risk information in the rating system would be associated with the static measures, those most interested in the dynamic tests may find that more dismissive of the dynamic tests than the combination of both types of information in a single risk model. Since an unknown portion of our crash database does contain untripped rollovers, the risk model based on that data without the use of untripped rollover test data at hand may also be perceived as not the best use of all data available to NHTSA.

Some of the parties most interested in dynamic tests have commented repeatedly that SSF should not be used in the rollover resistance rating of vehicles. However, consumer information based only on dynamic maneuver tests greatly reduces the assessment of the physical forces that cause real world rollovers. That would make the consumer information less useful to the public.

SSF measures the steady, rigid body load transfer common to all rollovers. The quasi-static centrifuge test adds a measurement of the load transfer due to body roll which should also be common to all rollovers. The Exponent sled test and the straight tethered centrifuge test add roll momentum effects typical of tripped rollovers and possibly J-turn tests. The dynamic maneuver tests add to these only a measurement of the effect of ESC and other electronic ''rollover prevention'' systems and a measurement of dynamic suspension behavior that may detect unusual problems at limit conditions. However, the test conditions of dynamic maneuver tests are limited by on-road tire traction and represent only the special case of on-road untripped rollover. Hence, we believe the dynamic maneuver tests should be used to supplement in some way one of the other three types of tests with relevance to tripped rollovers because tripped rollovers represent the vast majority of real world rollovers.

Consumers Preferences for Presentation of Rollover Ratings

In response to the NAS recommendations and in order to better refine approaches to developing and delivering consumer information on rollover, NHTSA recently initiated additional consumer research on rollover. This research was to further explore the perceptions, opinions, beliefs and attitudes of drivers about vehicle rollover, and to gather reactions

[7] The example of Figure 1 shows substantial differences in risk prediction by standard logistic regression when hypothetical dynamic test results are added to a model using only SSF to describe the vehicle. This example demonstrates the potential value of adding dynamic test results to the logit model because the predictions that include the hypothetical dynamic test results more closely match the actual rollover rates.

to different presentations of ratings and other rollover information.

The consumer research conducted was iterative in that it utilized individual in-depth interviews as a first phase, and focus group testing as a second phase. The in-depth interviews were conducted with 22 persons in Baltimore, MD in March, 2002. A total of 12 focus groups of 106 persons were conducted in Chicago, Dallas, and Richmond in April, 2002. Participants for both the interviews and focus groups had to have purchased or planned to purchase a vehicle within the year. They also had to rate safety as somewhat or very important in their vehicle purchase decisions. One-third of the participants also had to rate rollover as somewhat or very important in their purchase decisions.

The in-depth interviews were conducted with the intention of exploring consumer beliefs and perceptions in a probing more detailed way than is possible in focus groups. The interviews also served to provide insights as to how the focus groups could be most effectively conducted to acquire the desired findings. The interview results provided the basis for modifying approaches and sample materials presented at the focus groups. This iterative process did not, however, render opposing or contradictory results. The findings of the interviews and focus groups were remarkably and consistently similar. The key findings are as follows:

Understanding of and Preference for Dynamic and/or Static Rating for Rollover

- Virtually all participants were able to identify the difference between the tests for the Static Stability Factor (SSF) Rollover Rating and the Dynamic Test rollover rating, *i.e.*, that the first is a vehicle measurement and that the latter involves maneuver tests.
- Most participants preferred a combined rating, especially once they understood that 95% of real-world rollovers are accounted for by SSF. Those who said they should be presented separately thought they would provide consumers with more information; but they also thought that the different (5 pt vs.3 pt) rating scales presented would confuse people. Many thought that a dynamic test was more realistic.
- Some participants had trouble understanding ''track width'' and ''center of gravity height'' in the description of SSF.
- Even though most participants did not explain rollover in the same way it was described to them, most stated that the description of rollover they read (from NHTSA web-site information on rollover) was understandable.
- Some of the rollover terminology; ''rollover resistance rating,'' ''tripped by'' and especially ''tripped by a *ditch,*'' were confusing or did not make sense to many of the participants.

Preferences for Presentation of Rollover Ratings and Information

- Participants were presented with stars, numbers, letters and descriptive language as alternatives for presenting rollover ratings. Stars were overwhelmingly preferred by both interview and focus group participants. They clearly disliked number ratings, and were ambivalent about letters and descriptors. Graphics presented to participants are shown in Figure 2 and in the report ''Findings of 21 In-Depth Interviews and 12 Focus Group Discussions Regarding Vehicle Rollover,'' which is available in the docket for this notice.
- Participants accurately interpreted the star ratings, with and without the key that explained what each star meant and which was better. However, many did not fully grasp that the ratings were vehicle ratings and were therefore confused by or did not find credible the actual data sets that showed percentages from over 40% to under 10% for rollover risk.
- When presented with a bar graph that showed an individual vehicle among all vehicles, most interview participants found the bar graph complicated and too vague. Some said it might be useful to decide between different vehicle classes. The bar graph was refined visually and presented as a way of checking an individual vehicle through the web-site for the focus groups. When shown this graph depicting where a certain vehicle ranked in relationship to other vehicles in it's class, and against all classes as well as where it fell in the star rating range, most participants understood it and thought it useful.

Preferences for Rating Levels for Rollover Ratings

- Nearly all of the participants preferred five rating levels. Alternatives of three and ten ratings were presented through the use of numbers, letters, half-stars and narrative descriptors. Most said they did not like the half stars, but when probed said it might make a difference in whether or not they would consider a vehicle. Interestingly, many assigned different values to half-star ratings; *e.g.* 3½ stars was considered more important than 4½ stars.
- Most participants felt three rating levels were too few. Very few felt that 10 rating levels were appropriate. Most thought it was too much information and unnecessary.

The findings of this research will help NHTSA to develop appropriate and useful rollover ratings and consumer information in the future. NAS has recommended that the agency provide the public with additional rating levels in order to allow better differentiation of rollover risk between vehicles. While clearly there are improvements to be made in how rollover resistance and ratings are explained and made useful to the consumer, there does not seem to be any basis in our research to date for deviating from stars or from the five rating levels presently being used. However, for consumers who desire more information than just star-ratings, we will provide detailed information on each vehicle on the web-site. Consumers will also be able to differentiate between vehicles through use of the internet based bar-graph data that tested positively, and through other as yet undeveloped presentations.

VIII. Intent To Evaluate Centrifuge Test

The test device for the centrifuge test is similar in concept to a merry-go-round. A person seated at the edge of the merry-go-round feels a lateral force pushing him or her away from the spinning surface that increases with the rotational speed of the merry-go-round. The centrifuge device test shown in Figure 3 consists of an arm attached to a powered vertical shaft. At the end of the arm is a horizontal platform upon which the test vehicle is parked. As the vertical shaft rotates, the parked vehicle is subjected to a lateral acceleration that can be precisely controlled and measured. The basic quasi-static measurement is the lateral acceleration at which the parked vehicle experiences two-wheel lift. The outside tires are restrained by a low curb so the measurement is independent of surface friction, and the vehicle is tethered for safety to prevent excessive wheel lift. This test method was suggested by the University of Michigan Transportation Research Institute (UMTRI) both in comments to our notice about the present rollover resistance ratings and more recently in the context of the TREAD Act. As discussed in Section III, the quasi-static centrifuge test was also recommended by GM, Honda, CU and Advocates as a possible improvement on SSF to measure general rollover resistance. The test method is directed primarily at tripped rollover, which UMTRI noted accounts for all but a small percentage of rollovers.

The centrifuge test has many advantages. Like SSF, it is a measurement that that can be performed accurately, repeatably and economically (at least in labor costs). It is arguably more accurate than SSF in evaluating tripped rollover resistance because it includes the effect of the outward c.g. movement as a result of suspension and tire deflections. Its correlation to SSF would be high, and it would be expected to correlate well with the actual rollover rates of vehicles, because those statistics are largely driven by tripped rollovers. The quasi-static centrifuge measurement of a vehicle's lateral acceleration at two-wheel lift is expected to be roughly 10 percent less than the vehicle's SSF with about a +/−5 percent range to cover extremes in roll stiffness.

Despite these advantages, we did not include the centrifuge test in the test evaluation plan that was the subject of our July 2001 notice. We stated the following reasons:

> Improvements in centrifuge test performance can be made by suspension changes that degrade handling. The best performance in the centrifuge test (and in the closely related but less accurate tilt table test) occurs when the front and rear inside tires lift from the platform at the same time. The tuning of the relative front/rear suspension roll stiffness to accomplish this will cause the vehicle to oversteer more than most manufacturers would otherwise desire. We do not want to tempt manufacturers to make this kind of trade-off. Further, we understood the intention behind TREAD to be that NHTSA should give the American public information on performance in a driving maneuver that would evaluate the performance of new technologies like ESC. The centrifuge test would not do so.

As discussed in Section III of this notice, GM provided some data disputing our concern that improvements in centrifuge test scores could be obtained at the expense of changing the understeer/oversteer suspension tuning of vehicle from what the manufacturer would otherwise choose as optimum for handling and consumer satisfaction. We request that other manufacturers and vehicle designers review GM's information (comment 6 to docket NHTSA–2001–9663 notice 1) and comment on the validity of NHTSA's concern.

In view of the interest expressed by several commenters in centrifuge testing and the potential importance GM's information, NHTSA intends to evaluate the practicability of centrifuge testing. To our knowledge, centrifuge tests for rollover resistance of vehicles have never been performed. The interest of commenters is based on theoretical advantages over SSF. NHTSA will develop a test fixture and test a number of vehicles in the quasi-static mode using a very large centrifuge at NASA's Goddard Space Flight Center in Greenbelt, Maryland.

IX. Handling Tests

A. The Need for Handling Testing and a Handling Rating

NHTSA expects that implementation of a rollover rating system using dynamic tests will, over time, influence vehicle designs. Therefore, it is of the utmost importance that we do not encourage designers to maximize vehicle performance in rollover resistance tests by degrading other safety relevant areas of vehicle performance.

Several possible ways to maximize vehicle performance in rollover resistance tests would degrade vehicle handling. For example, better performance in rollover resistance tests could be achieved by one or more of:

- Making the vehicle have less turning capability. Unfortunately, this would make it harder, in difficult situations, for drivers to keep the vehicle on the road or to avoid colliding with other vehicles, pedestrians, animals, and other objects.
- Equalizing the roll stiffnesses of the front and rear suspensions. Unfortunately, this may make the vehicle spin-out in limit maneuvers.
- Making the vehicle respond slowly to steering inputs. Again, this would make it harder, in some situations, for drivers to keep the vehicle on the road or to avoid colliding with other vehicles or pedestrians.

To discourage vehicle designers from maximizing rollover resistance at the expense of handling, NHTSA believes that if our rollover ratings are directly influenced by dynamic tests then we must also have a handling rating based on handling tests.

In addition to discouraging vehicle designers from maximizing rollover resistance at the expense of handling, having a handling rating based on handling tests should also encourage the adoption of yaw stability control. While the crash prevention benefits of yaw stability control have not yet been proven, we anticipate that it may help prevent crashes. Based on NHTSA's Phase IV Rollover Research, we will see some improvement in a vehicle's rollover resistance rating due to yaw stability control. However, a handling rating provides another opportunity for showing the beneficial effects of yaw stability control.

B. Guiding Principles for NHTSA Handling Testing and Handling Rating

What is handling? In this document, what we mean by handling is the lateral response of the vehicle to a driver's control inputs. Clearly steering inputs are the most important control inputs for handling, however, brake and throttle pedal inputs can also have an effect.

Traditionally, handling assessments have been made subjectively. Several test drivers drive a vehicle for a period of time through a broad variety of maneuvers. The maneuvers range in severity from mild to severe to limit. After driving the vehicle, each driver independently assigns a numerical handling rating to the vehicle. Ratings from all of the test drivers are averaged to obtain an overall handling rating.

We do not believe that a subjective handling rating is suitable for inclusion in the New Car Assessment Program. Government generated handling ratings must be objectively and repeatably determined.

There are two perspectives for handling ratings. One perspective is how safe the vehicle is to drive. The other is how well the vehicle gives an enthusiast driver a pleasurable sense of control. Given its mission, a NHTSA generated handling rating can only assess how safe a vehicle is to drive, not how pleasurable it is to drive.

What aspects of handling affect safety? NHTSA has identified the following four:

1. Amount of turning capability. A vehicle that can turn more sharply should be easier for drivers to keep on the road and to avoid colliding with other vehicles, pedestrians, animals, and other objects.
2. Graceful degradation at/near limits. When a driver approaches or tries to exceed the maximum turning capability of a vehicle the vehicle should plow-out (saturate traction on the front wheels first) instead of spin-out (saturate traction on the rear wheels first).
3. Predictability. When the driver steers, brakes, or changes the throttle level, the vehicle should do what the driver expects the vehicle to do. Since all vehicles have delays between steering, braking, or throttle application and the response of the vehicle, drivers must predict the response of the vehicle to a control input. If the vehicle does not perform as expected, there may not be time for the driver to react to the unexpected motion before a crash occurs.
4. Responsiveness. When the driver steers, brakes, or changes the throttle level, the vehicle should respond

quickly to the driver's inputs. A slowly responding vehicle would be harder for drivers to keep on the road or to avoid colliding with other vehicles, pedestrians, animals, and other objects.

We have discussed the aspects of handling that affect safety with Consumers Union. In addition to the four aspects listed above, Consumers Union uses a fifth, appropriate feedback to the steering handwheel, in developing ratings for their magazine. While we do not dispute the importance of appropriate feedback to the steering handwheel, this seems to us to be such an inherently subjective assessment that we have not included it in the above list.

We welcome comments as to the correctness of the above list of handling aspects that affect safety. Are the aspects that are listed appropriate? Have we left anything out?

C. Handling Tests Being Considered by NHTSA

NHTSA is considering developing a handling rating based upon results from the three handling maneuvers. The handling maneuvers are:

1. Slowly Increasing Steer maneuver. Using a programmable steering controller, the steering handwheel is turned slowly (13.5 degrees per second) from zero to well beyond the point at which the maximum lateral acceleration occurs (a handwheel steering angle of 270 degrees). The driver applies the throttle to keep the vehicle's speed as constant at 50 mph as possible during the turn.

The Slowly Increasing Steer maneuver provides data to assess the amount of turning capability of a vehicle (the Maximum Attainable Lateral Acceleration) and whether the vehicle's handling degrades gracefully at the limit (did the vehicle plow or spin when the maximum achievable turn was attained). We performed this maneuver for every vehicle tested during Phases II, III, and IV of NHTSA Rollover Research. Based on our experience we believe that this maneuver can be performed with excellent objectivity and repeatability. There is a well worked out and widely accepted procedure for the Slowly Increasing Steering maneuver that is contained in the Society of Automotive Engineers Standard J266.

2. Dropped Throttle in a Turn maneuver. Using a programmable steering controller, the steering handwheel is turned quickly, and then held at, the angle required to attain 90 percent of the vehicle's maximum achievable lateral acceleration. The driver initially applies the throttle to keep the vehicle's speed as constant as possible during the turn. The throttle is then suddenly released and the resulting vehicle motion measured.

The Dropped Throttle in a Turn maneuver provides data to assess the predictability of the vehicle. Desirable behavior is for the vehicle to either maintain the same radius of curvature or to ''tuck-in'' a bit (slightly decrease the radius of curvature). While we have not performed this maneuver in the past, we expect that this maneuver can be performed with excellent objectivity and repeatability. There is a well worked out and widely accepted procedure for the Dropped Throttle in a Turn maneuver that is contained in the International Standards Organization's Standard 9816.

Multiple measures of vehicle performance are determined from this test. One is the Dropped Throttle Yaw Rate Ratio, defined as the maximum yaw rate attained at any time during the three seconds after the throttle was released divided by the initial yaw rate. The second is the Dropped Throttle Path Deviation, defined as the lateral displacement of the vehicle's center of gravity two seconds after the throttle has been released from the anticipated path if the throttle had not been released.

3. The Step Steer maneuver. This maneuver is performed in the same manner as the NHTSA J-Turn except that the handwheel steering angle used is less. Instead of turning the steering handwheel to 8.0 times the angle needed to achieve 0.3 g lateral acceleration in the Slowly Increasing Steer maneuver (the angle used for the NHTSA J-Turn), for this maneuver the steering wheel is only turned to the angle needed to achieve 4.0 meters per second squared lateral acceleration. A handwheel steering rate of 1,000 degrees per second is used. The maneuver entrance speed is 50 mph (80 kph) and the throttle is held constant through the test.

Multiple measures of vehicle performance are determined from this test. One is the Yaw Rate Response Time, defined as the time from when the steering handwheel reaches 50 percent of its final value to the time when the yaw rate reaches 90 percent of its steady-state value. The second is the Peak Yaw Rate Response Time, defined as the time from when the steering handwheel reaches 50 percent of its final value to the time when the yaw rate reaches it peak value. The third is Percent Overshoot, defined as the difference between the peak and steady state yaw rates divided by the steady state yaw rate.

The Step Steer maneuver provides data to assess the predictability (from the Percent Overshoot measure) and the responsiveness (from the Yaw Rate Response Time and the Peak Yaw Rate Response Time measures) of the vehicle. We performed this maneuver for every vehicle tested during Phase IV of NHTSA Rollover Research; based on our experience we believe that this maneuver can be performed with excellent objectivity and repeatability. There is a well worked out and widely accepted procedure for the Step Steer maneuver that is contained in the International Standards Organization's Standard 7401.

Each Handling Maneuver would be performed at two loading conditions, Nominal Load and Rear Load. The Nominal Load consists of the curb weight vehicle plus the driver plus NHTSA's instrumentation package plus NHTSA's titanium outriggers. The Rear Load adds to the Nominal Load ballast positioned such that the vehicles rear Gross Axle Weight Rating (GAWR) and Gross Vehicle Weight Rating (GVWR) are achieved simultaneously. The ballast is comprised of bags of lead shot, positioned as flat as possible across the rear cargo area of the test vehicle. The ballast will be secured in a manner that insures it does not shift during testing. We will use a '' inch enclosed plywood box to contain the ballast used in the Rear Load condition. Due to the wide range of shapes and sizes of light vehicle cargo areas, such boxes will need to be constructed on a per-vehicle basis.

We welcome comments as to the appropriateness of the above list of handling maneuvers. What have we left out?

NHTSA is seeking tests of handling and controllability both as way of dealing with potential trade-offs between handling properties and rollover tests and as a way of giving credit to technologies that improve controllability. We request comment on the value of such tests to resolve the concern for design compromises that could improve centrifuge test scores.

One of our concerns is that yaw stability control is supposed to increase a vehicle's predictability; however, our Dropped Throttle in a Turn Maneuver test is may not be adequate for measuring the effects of yaw stability control. What other objective and repeatable tests exist for measuring vehicle predictability?

D. Combining Handling Test Results to Generate a Handling Rating

As is the case for rollover resistance ratings, an ideal handling rating system would use data obtained from the above mentioned handling tests to predict the

risk, for a vehicle make/model assuming an ''average'' driver, of a single vehicle crash. The risk based ratings are better than ratings that are merely directionally correct because in addition to answering the question ''Is the single vehicle crash risk lower for Vehicle A or Vehicle B?'', it can also answer the questions, ''How much lower?'', and ''What is the absolute risk?''.

The influence of drivers on whether or not a single vehicle crash occurs is very high. The driver demographic variables that are available in the crash data bases are believed not to be sufficient to quantify this influence (*i.e.*, there is no variable quantifying a driver's aggressivity). Therefore, we believe that, unlike rollover resistance ratings, handling ratings will not be able to predict single vehicle crash risk. They can, at best, be directionally correct.

We envision a three level handling rating system, tentatively, from best to worst, A, B, and C. A star rating system would not be used for handling ratings because they are not risk based but only directionally correct.

The handling rating calculation method proposed below contains many constants whose values NHTSA will specify at a later date (*e.g.*, a_{YMinN} and $a_{YRangeN}$). Our intention is to determine values for these constants based on data collected during the Phase VI testing. During Phase VI 25 vehicles for which we have state crash data on rollover will be tested using both rollover maneuver tests and handling tests concluding in Fall 2002. We have tried to choose the Phase VI test vehicles so as to cover the full range of handling that is seen in the current fleet, from excellent to average. (We do not believe that any current production vehicle has handling we would characterize as bad.) Once we have the Phase VI data, we will select values for the constants so that approximately one-third of the vehicles earn A ratings, one-third earn B ratings, and one-third earn C ratings.

The handling rating would be determined from the measurements results of the handling tests as follows:

1. Calculate a Handling Score, HS, from the formula:

$$HS = W_1 * H_1 + W_2 * H_2 + W_3 * H_3 + W_4 * H_4 + W_5 * H_5 + W_6 * H_6 + W_7 * H_7 + W_8 * H_8 + W_9 * H_9 + W_{10} * H_{10} + W_{11} * H_{11} + W_{12} * H_{12}$$

where W_1 through W_{12} are weights that NHTSA will select values for at a later date, H_1 is the Maximum Attainable Lateral Acceleration at Nominal Load sub-score, H_2 is the Dropped Throttle Yaw Rate Ratio at Nominal Load sub-score, H_3 is the Dropped Throttle Path Deviation at Nominal Load sub-score, H_4 is the Yaw Rate Response Time at Nominal Load sub-score, H_5 is the Peak Yaw Rate Response Time at Nominal Load sub-score, and H_6 is the Percent Overshoot at Nominal Load sub-score, H_7 is the Maximum Attainable Lateral Acceleration at Rear Load sub-score, H_8 is the Dropped Throttle Taw Rate Ratio at Rear Load sub-score, H_9 is the Dropped Throttle Path Deviation at Rear Load sub-score, H_{10} is the Yaw Rate Response Time at Rear Load sub-score, H_{11} is the Peak Yaw Rate Response Time at Rear Load sub-score, and H_{12} is the Percent Overshoot at Rear Load sub-score.

2. Calculate the Maximum Attainable Lateral Acceleration at Nominal Load sub-score, H_1, from the formulas:

If $a_{YMaxN} < a_{YMinN}$ then $H_1 = 0$

If $a_{YMaxN} > (a_{YMinN} + a_{YRangeN})$ then $H_1 = 1$

Otherwise

$a_{BarN} = (a_{YMaxN} - a_{YMinN}) / a_{YRangeN}$

$H_1 = a_{BarN} * (2 - a_{BarN})$

where a_{YMaxN} is the measured Maximum Attainable Lateral Acceleration at Nominal Load, and a_{YMinN} and $a_{YRangeN}$ are constants that NHTSA will select values for at a later date.

3. Calculate the Dropped Throttle Yaw Rate Ratio at Nominal Load sub-score, H_2, from the formula:

If $R_{MaxN} > R_{RangeN}$ then $H_2 = 0$

Otherwise

$H_2 = 1 - ((R_{MaxN} - 1) / R_{RangeN})^2$

where R_{MaxN} is the measured Dropped Throttle Yaw Rate Ratio at Nominal Load, and R_{RangeN} is a constant that NHTSA will select a value for at a later date. Note that R_{MaxN} can never be less than one.

4. Calculate the Dropped Throttle Path Deviation at Nominal Load sub-score, H_3, from the formula:

If $Y_{DevN} < Y_{MinN}$ then $H_3 = 0$

If Y_{DevN} Y_{MinN} and $Y_{DevN} < 0$ then $H_3 = 1 - (Y_{DevN}/Y_{MinN})^2$

If Y_{DevN} 0 and $Y_{DevN} < Y_{OkN}$ then $H_3 = 1$

If Y_{DevN} Y_{OkN} and $Y_{DevN} < Y_{MaxN}$ then

$Y_{BarN} = (Y_{DevN} - Y_{OkN})/(Y_{MaxN} - Y_{OkN})$

$H_3 = Y_{BarN} * (2 - Y_{BarN})$

If $Y_{DevN} > Y_{MaxN}$ then $H_3 = 0$

where Y_{DevN} is the measured Dropped Throttle Path Deviation at Nominal Load, and Y_{MaxN}, Y_{MinN}, and Y_{OkN} are constants that NHTSA will select values for at a later date.

5. Calculate the Yaw Rate Response Time at Nominal Load sub-score, H4, from the formula:

If $t_{rN} < t_{rMinN}$ then $H_4 = 1$

If $t_{rN} > (t_{rMinN} + t_{rRangeN})$ then $H_4 = 0$

Otherwise

$H_4 = ((t_{rMinN} + t_{rRangeN}) - t_{rN})/t_{rRangeN}$

where t_{rN} is the measured Yaw Rate Response Time at Nominal Load, and t_{rMinN} and $t_{rRangeN}$ are constants that NHTSA will select values for at a later date.

6. Calculate the Peak Yaw Rate Response Time at Nominal Load sub-score, H_5, from the formula:

If $t_{pN} < t_{pMinN}$ then $H_5 = 1$

If $t_{pN} > (t_{pMinN} + t_{pRangeN})$ then $H_5 = 0$

Otherwise

$H_5 = ((t_{pMinN} + t_{pRangeN}) - t_{pN})/t_{pRangeN}$

where t_{pN} is the measured Yaw Rate Response Time at Nominal Load, and t_{pMinN} and $t_{pRangeN}$ are constants that NHTSA will select values for at a later date.

7. Calculate the Percent Overshoot at Nominal Load sub-score, H_6, from the formula:

If $O_{r\%N} < 0$ then $H_6 = 1$

Otherwise

$H_6 = 1 - (O_{r\%N}/O_{rRangeN})^2$

where $O_{r\%N}$ is the measured Percent Overshoot at Nominal Load, and $O_{rRangeN}$ is a constant that NHTSA will select a value for at a later date. Note that $O_{r\%N}$ can never be less than zero.

8. Calculate the Maximum Attainable Lateral Acceleration at Rear Load sub-score, H_7, from the formulas:

If $a_{YMaxR} < a_{YMinR}$ then $H_7 = 0$

If $a_{YMaxR} > (a_{YMinR} + a_{YRangeR})$ then $H_7 = 1$

Otherwise

$a_{BarR} = (a_{YMaxR} - a_{YMinR}) / a_{YRangeR}$

$H_7 = a_{BarR} * (2 - a_{BarR})$

where a_{YMaxR} is the measured Maximum Attainable Lateral Acceleration at Rear Load, and a_{YMinR} and $a_{YRangeR}$ are constants that NHTSA will select values for at a later date.

9. Calculate the Dropped Throttle Yaw Rate Ratio at Rear Load sub-score, H_8, from the formula:

If $R_{MaxR} > R_{RangeN}$ then $H_8 = 0$

Otherwise

$H_8 = 1 - ((R_{MaxR} - 1)/R_{RangeR})^2$

where R_{MaxR} is the measured Dropped Throttle Yaw Rate Ratio at Rear Load, and R_{RangeR} is a constant that NHTSA will select a value for at a later date. Note that R_{MaxR} can never be less than one.

10. Calculate the Dropped Throttle Path Deviation at Rear Load sub-score, H_9, from the formula:

If $Y_{DevR} < Y_{MinR}$ then $H_9 = 0$

If Y_{DevR} Y_{MinR} and $Y_{DevR} < 0$ then $H_9 = 1 - (Y_{DevR}/Y_{MinR})^2$

If Y_{DevR} 0 and $Y_{DevR} < Y_{OkR}$ then $H_9 = 1$

If Y_{DevR} Y_{OkR} and $Y_{DevR} < Y_{MaxR}$ then

$Y_{BarR} = (Y_{DevR} - Y_{OkR})/(Y_{MaxR} -$

Y_{OkR})

$H_9 = Y_{BarR} * (2 - Y_{BarR})$

If $Y_{DevR} > Y_{MaxR}$ then $H_9 = 0$

where Y_{DevR} is the measured Dropped Throttle Path Deviation at Nominal Load, and Y_{MaxR}, Y_{MinR}, and Y_{OkR} are constants that NHTSA will select values for at a later date.

11. Calculate the Yaw Rate Response Time at Rear Load sub-score, H_{10}, from the formula:

If $t_{rR} < t_{rMinR}$ then $H_{10} = 1$

If $t_{rR} > (t_{rMinR} + t_{rRangeR})$ then $H_{10} = 0$

Otherwise

$H_{10} = ((t_{rMinR} + t_{rRangeR}) - t_{rR})/t_{rRangeR}$

where t_{rR} is the measured Yaw Rate Response Time at Rear Load, and t_{rMinR} and $t_{rRangeR}$ are constants that NHTSA will select values for at a later date.

12. Calculate the Peak Yaw Rate Response Time at Rear Load sub-score, H_{11}, from the formula:

If $t_{pR} < t_{pMinR}$ then $H_{11} = 1$

If $t_{pR} > (t_{pMinR} + t_{pRangeR})$ then $H_{11} = 0$

Otherwise

$H_{11} = ((t_{pMinR} + t_{pRangeR}) - t_{pR})/t_{pRangeR}$

where t_{pR} is the measured Yaw Rate Response Time at Rear Load, and t_{pMinR} and $t_{pRangeR}$ are constants that NHTSA will select values for at a later date.

13. Calculate the Percent Overshoot at Rear Load sub-score, H_{12}, from the formula:

If $O_{r\%R} < 0$ then $H_{12} = 1$

Otherwise

$H_{12} = 1 - (O_{r\%R}/O_{rRangeR})^2$

where $O_{r\%R}$ is the measured Percent Overshoot at Rear Load, and $O_{rRangeR}$ is a constant that NHTSA will select a value for at a later date. Note that $O_{r\%R}$ can never be less than zero.

14. Calculate the provisional Handling Rating from the Handling Score, HS, as follows:

If $HS > HS_A$ then the provisional Handling Rating is an A

If $HS < HS_C$ then the provisional Handling Rating is a C

Otherwise the provisional Handling Rating is a B

where HS_A and HS_C are constants that NHTSA will select values for at a later date.

15. If the vehicle spins when determining the Maximum Attainable Lateral Acceleration at Nominal Load, then reduce the provisional Handling Rating by one letter (but never below a C).

16. If the vehicle spins when determining the Maximum Attainable Lateral Acceleration at Rear Load, then reduce the provisional Handling Rating by one letter (but never below a C).

17. The provisional Handling Rating now becomes the final Handling Rating.

We welcome comments as to the appropriateness of the above technique for determining handling ratings. How can it be improved? One possibility would be to have two handling ratings, one for Nominal Load and one for Rear Load. Would this be better? Or should we consider the ratings for the different loadings to be an additional level of detail available to interested persons who want more than just the one rating?

X. Assessment of Costs and Benefits

The costs are Federal Government costs for developing the test protocol and rating system, conducting the tests, and disseminating the information. The benefits are information to consumers. Consumers want additional information. It is impossible for us to quantify the effect on consumer behavior or on manufacturer behavior.

XI. Rulemaking Analyses and Notices

A. Executive Order 12866

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 Office of Management and Budget (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.

NHTSA has considered the impact of this action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be economically not significant. However, because it is a subject of Congressional interest, this rulemaking document was reviewed by the Office of Management and Budget under Executive Order 12866, ''Regulatory Planning and Review.''

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. The proposed action does not impose regulatory requirements on any manufacturer or other party.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

The proposed action does not impose regulatory requirements on any manufacturer or other party.

F. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect

of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

This proposal does not contain ''collections of information,'' as that term is defined in 5 CFR Part 1320 Controlling Paperwork Burdens on the Public.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. This action will not result in regulatory language.

XII. Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on options we propose, to suggest new approaches we have not considered, provide new data, indicate how this proposed rule may affect you, or provide other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts of the proposal you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

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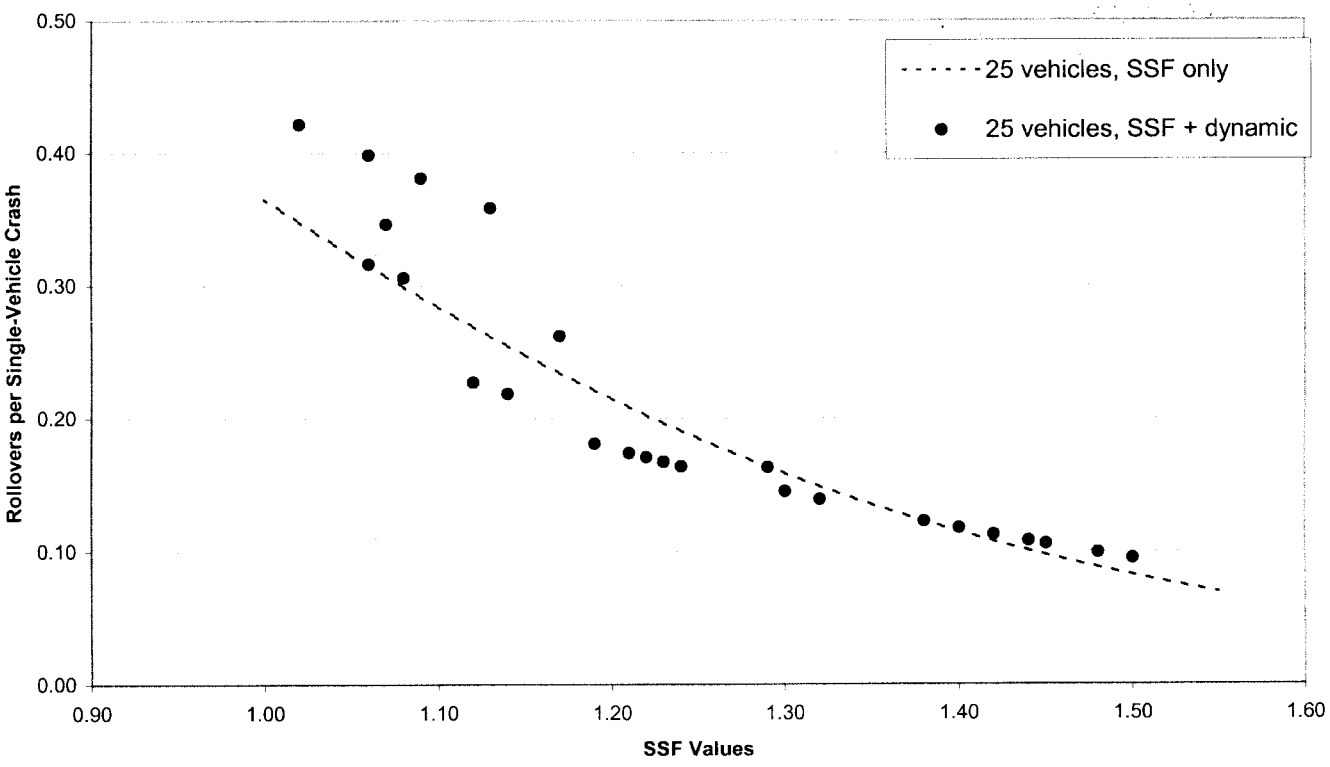
Issued on: September 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

BILLING CODE 4910–59–P

Figure 1. Rollover Risk from Two Logistic Models, with and without Hypothetical Dynamic Maneuver Test Results



Rollover Star Rating

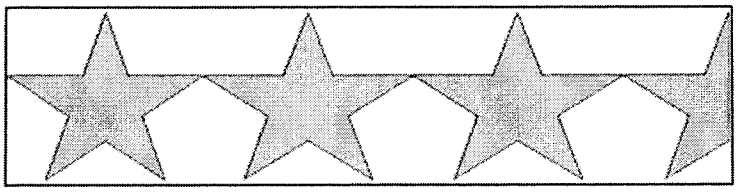
Rollover Rating for this Vehicle is:

Figure 2a. Graphics presented to focus groups – 4 out of 5 stars, without key

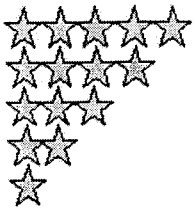
Figure 2b. Graphics presented to focus groups – 4 out of 5 stars, with key

Star Rating

The Static Rollover Rating for this Vehicle is:



Rollover Risk



Less than 10% chance of rollover
10-20% chance of rollover
20-30% chance of rollover
30-40% chance of rollover
More than 40% chance of rollover

Figure 2c. Graphics presented to focus groups – 5 star system with half stars used

Separate Star Ratings

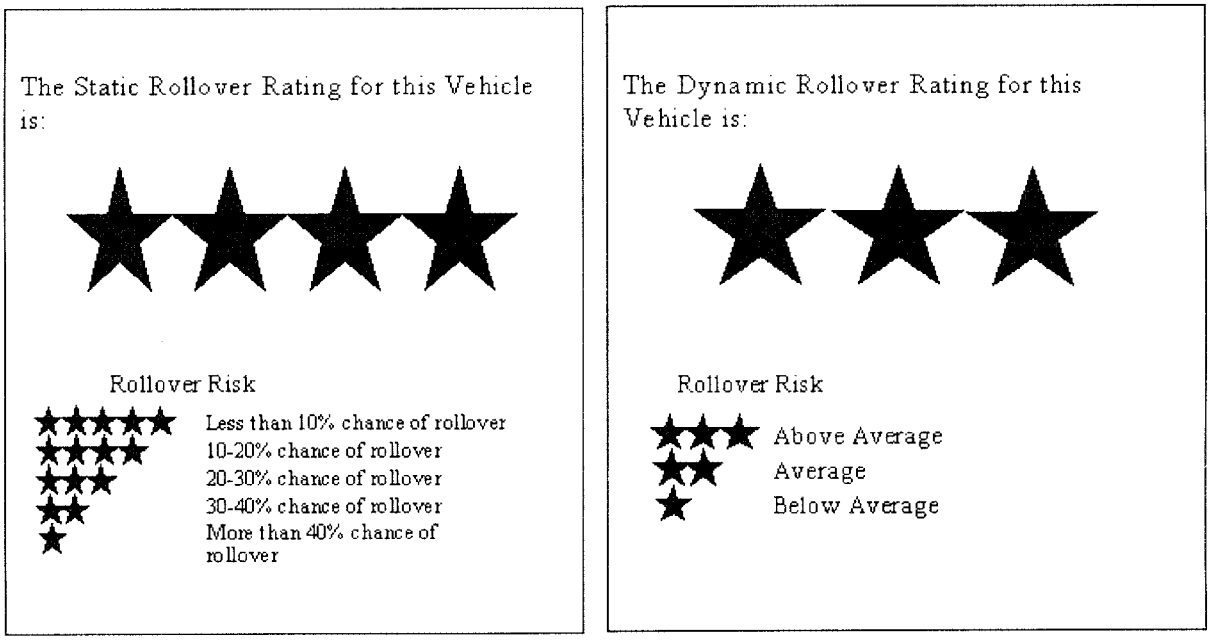


Figure 2d. Graphics presented to focus groups – separate presentation of static and dynamic ratings

Number Rating

The Static Rollover Rating for this Vehicle is:

4

Rollover Risk

1 Less than 10% chance of rollover
2 10-20% chance of rollover
3 20-30% chance of rollover
4 30-40% chance of rollover
5 More than 40% chance of rollover

Figure 2e. Graphics presented to focus groups – 5 level system expressed with numbers rather than stars

Number Rating

The Static Rollover Rating for this Vehicle is:

7

Rollover Risk

1 Less than 10% chance of rollover
2 11-14 % chance of rollover
3 15-18% chance of rollover
4 19-22% chance of rollover
5 23-26% chance of rollover
6 27-30% chance of rollover
7 31-34% chance of rollover
8 35-38% chance of rollover
9 39-42% chance of rollover
10 More than 42% chance of rollover

Figure 2f. Graphics presented to focus groups – 10 level system expressed with numbers rather than half-stars

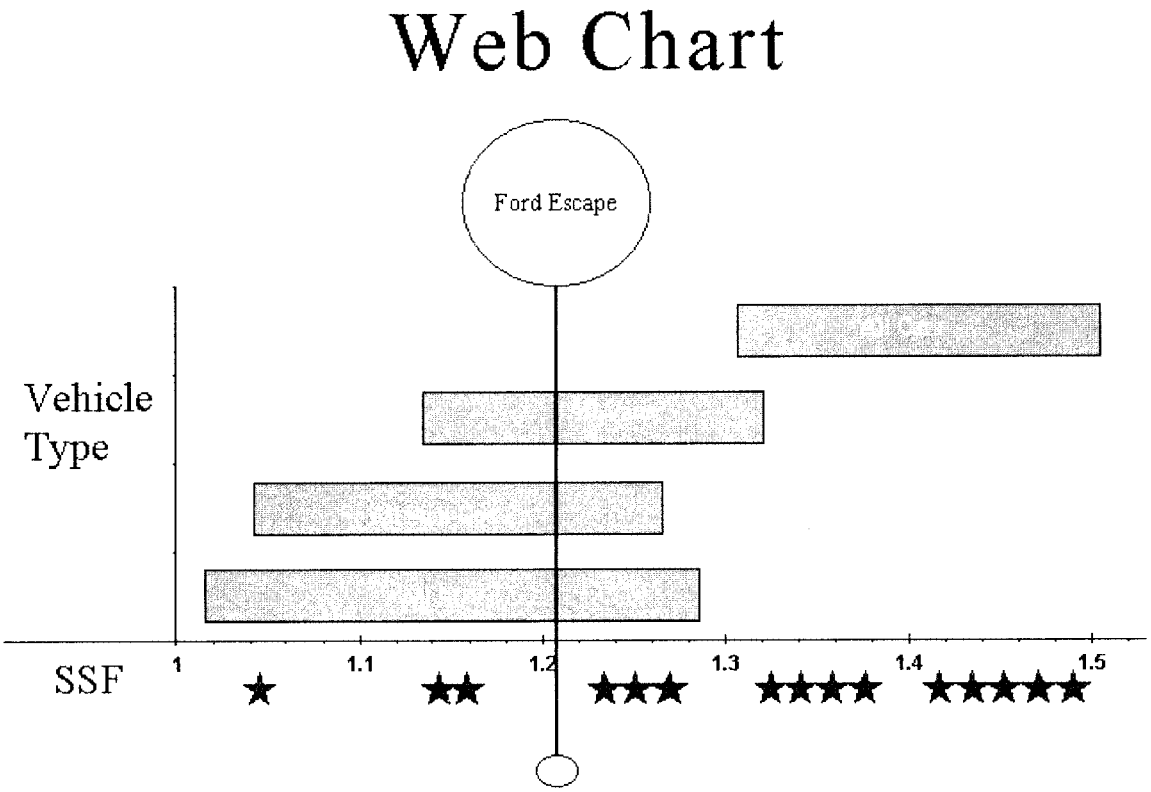


Figure 2g. Graphics presented to focus groups – rating of the vehicle of interest shown graphically in context of all other rated vehicles

Emergency Handling Letter Rating

The Vehicle Control Rating for this Vehicle is:

B

Key

A Above Average

B Average

C Below Average

Figure 2h. Graphics presented to focus groups – 3 level system expressed with letters

Emergency Handling Narrative Rating

The Vehicle Control Rating for this Vehicle is:

Average

Key

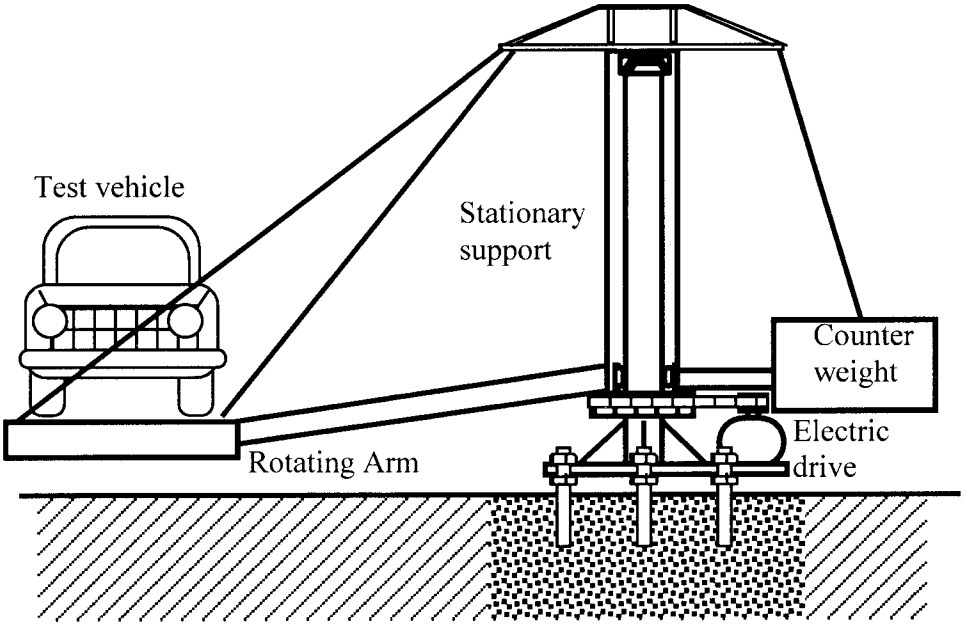
Below Average

Average

Above Average

Figure 2i. Graphics presented to focus groups – 3 level system expressed with words

Figure 3. Centrifuge Test



BILLING CODE 4910–59–C

Appendix I.—Summary of Maneuver Evaluation Test Results

Prior to the initiation of this research, NHTSA met with the Alliance of Automobile Manufacturers, Daimler-Chrysler, BMW, Volkswagen, Mitsubishi, Ford, Nissan, Toyota, Consumers Union of the United States, MTS Systems Corporation, Heitz Automotive Inc., and other interested parties to gather information on possible approaches for dynamic rollover tests. NHTSA also corresponded with the University of Michigan Transportation Research Institute. These parties made specific suggestions about approaches to dynamic testing of vehicle rollover resistance. Based on these suggestions plus NHTSA's experience in this area, a set of nine rollover resistance maneuvers were selected for evaluation. These nine maneuvers were listed in the July 2001 notice.

The research to evaluate potential maneuver tests for rollover is fully documented in the NHTSA technical report ''Another Experimental Examination of Selected Maneuvers That May Induce On-Road Untripped, Light Vehicle Rollover—Phase IV of NHTSA's Light Vehicle Rollover Research Program''. A number of test results and principal observations about the maneuvers are discussed here under the following four general headings:

1. Objectivity and Repeatability, *i.e.*, whether a maneuver could be performed objectively with repeatable results for the same vehicle.

2. Discriminatory Capability, *i.e.*, whether a maneuver demonstrated poorer performance for vehicles that have less resistance to rollover. Although of obvious importance, a maneuver's ability to discriminate between different levels of vehicle handling was not considered.

3. Performability *i.e.*, how difficult each maneuver is to objectively perform while obtaining repeatable results, how well developed are the test procedures for each maneuver, and whether the test procedure includes adequate means for adapting to differing vehicle characteristics.

4. Realistic Appearance, *i.e.*, whether a test maneuver looks like a maneuver consumers might imagine performing in an emergency.

The headings are useful for organizing the information, but they are not mutually exclusive. For example, the discussion of whether the performance of a vehicle in a particular maneuver is influenced more by handling properties than by rollover resistance would be under the heading of Discriminatory Capability. But the repeatability of the performance measurement discussed under Objectivity and Repeatability also influences the discriminatory capability of the maneuver. Similarly, Performability is a catch-all category that includes discussions of topics outside of the more specific headings.

Realistic Appearance helps consumers visualize the test maneuvers, but it is less important than the other three categories of test attributes because we are interested in anything that the vehicle is capable of doing. What we desire are ''worst case'' maneuvers, not necessarily ones that drivers try to perform. For example, drivers would not try to drive in a fishhook pattern, but the steering movements are similar to what occurs in an unsuccessful road edge recovery attempt. The maneuver only looks like a fishhook path if the vehicle does not tip-up. If the vehicle tips-up, it occurs shortly after the counter-steer when a driver in a road edge recovery attempt would still be on the pavement.

The specific reasons for the choice of maneuvers we are proposing for rollover resistance ratings are discussed in Section VI. The reasons are a consequence of the observations made in this section plus other practical considerations such as the desirability of multiple maneuvers to create a range of test severity were taken into account.

Four sport utility vehicles were tested during the summer of 2001 to obtain the data needed to perform this maneuver evaluation (the Phase IV Rollover Research). Two of the vehicles tested during the Phase IV research (the 1999 Mercedes ML320 and the 2001 Toyota 4Runner) came with yaw stability control systems as original equipment. Both of these vehicles were treated, for the purposes of maneuver evaluation, as two vehicles, one with yaw stability control and one without.

Therefore, the six test vehicles were:

1. 2001 Chevrolet Blazer without yaw stability control
2. 2001 Ford Escape without yaw stability control.

Note: The Automotive News Truck Market classifications classify this vehicle as a Sport Wagon instead of a Sport Utility Vehicle.

3. 1999 Mercedes ML320 with yaw stability control disabled
4. 1999 Mercedes ML320 with yaw stability control enabled
5. 2001 Toyota 4Runner with yaw stability control disabled
6. 2001 Toyota 4Runner with yaw stability control enabled

Each of the above test vehicles was tested in three configurations. Only two of these configurations will be discussed in this notice; test data from the Modified Handling configuration were not used for the maneuver evaluations discussed in this notice. The test configurations of interest were:

Nominal Vehicle. The vehicle load consisted of one occupant (the driver), instrumentation, and outriggers in/on the vehicle.

Reduced Rollover Resistance Vehicle. In addition to the Nominal Vehicle load, sufficient weight was placed on the roof to reduce the vehicle's SSF by 0.05. The weight on the roof was positioned so that the longitudinal/lateral position of the center of gravity did not change.

The Reduced Rollover Resistance Vehicle was used as a check on the sensitivity of the test maneuvers. A 0.05 reduction in SSF equates, for sport utility vehicles, to approximately a one star reduction in the vehicle's rollover resistance rating. (A larger reduction in SSF is necessary to achieve a one star rating reduction for vehicles, such as passenger cars, that have higher SSFs.) NHTSA believes that a one star reduction in the rollover resistance rating should make a vehicle substantially easier to rollover. Maneuvers with good discriminatory capability should measure substantially worse performance for this vehicle configuration than for the Nominal Vehicle configuration.

Data collected during the Phase IV Rollover Research was used to evaluate eight of the rollover resistance maneuvers (all except the J-Turn with Pulse Braking). For each of these eight maneuvers, vehicles were tested in the Nominal Vehicle configuration. For maneuvers which we deemed appropriate, testing was also performed using the Reduced Rollover Resistance configuration. For the J-Turn with Pulse Braking, we decided that we had sufficient data from prior testing (Phases II and III of the Rollover Research program) to evaluate this maneuver.

The results of the evaluation for each rollover resistance maneuver follows. For each maneuver, a brief description of the maneuver is given followed by its scores in each of the four evaluation factors. Each evaluation factor score is followed by a discussion as to how that particular score was decided upon.

A. NHTSA J-Turn

Maneuver Description

To perform this maneuver, the programmable steering controller input the handwheel commands described by Figure 1.

The NHTSA J-Turn handwheel angle is eight times the handwheel angle that produces a quasi-static 0.3 g lateral acceleration at 50 mph for each particular test vehicle. The handwheel rate of the handwheel ramp was 1000 degrees per second.

J-Turn tests were performed with two directions of steer, to the left and to the right. Vehicle speed was increased in 5 mph increments from 35 to 60 mph, unless at least two inches of simultaneous two-wheel lift was observed. If such wheel lift was detected, entrance speeds were iteratively reduced by 1 mph until it was no longer apparent.

Objectivity and Repeatability

The NHTSA J-Turn is the most objective and repeatable of all of the rollover resistance maneuvers. Figure 2 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for three tests of the Toyota 4Runner with yaw stability control enabled that were run at approximately the same speed (59.4, 58.1, and 58.6 mph). The Handwheel Angle graph shows that, by using the programmable steering controller, the steering control input can be precisely replicated from run-to-run (there are three traces in this graph). Test drivers can repeatably achieve input speeds within ±2 mph of the target speed. The vehicle speed, lateral acceleration and roll angle traces clearly show the very high repeatability of this maneuver.

Data from these runs is typical of our experience with the maneuver, with one exception. For runs that are either result in two-wheel lift or are very near to the point at which it first occurs, the roll angle repeatability becomes much worse. This is

the case for all rollover resistance maneuvers that induce tip up because the vehicle either falls over or it does not. As a result, small fluctuations in test performance can lead to large changes in roll angle in this situation. This results in a variability of approximately ±2 mph in determining the lowest speed at which two-wheel lift occurs. As such, roll angle variability at the tip-up threshold did not lower the Objectivity and Repeatability rating for this maneuver.

Performability

The NHTSA J-Turn is the easiest of all of the rollover resistance maneuvers to perform. Objective and repeatable NHTSA J-Turn maneuvers can easily be performed using a programmable steering controller. Having only one major steering movement maximizes maneuver repeatability. The test procedure is well developed. Procedures have been developed to adapt the NHTSA J-Turn maneuver to the characteristics of the vehicle being tested.

Discriminatory Capability

None of the vehicles tested had two-wheel lift during NHTSA J-Turn tests in their Nominal Vehicle configuration. However, all of the vehicles except the Ford Escape and the Toyota 4Runner with its yaw stability control enabled did have two-wheel lift when tested in their Reduced Rollover Resistance configuration. The NHTSA J-Turn is not a severe enough maneuver to discriminate between typical, current generation, sport utility vehicles loaded with a driver and passenger only. However, it was very sensitive to the decrease in rollover resistance attributable to a decrease in SSF of 0.05. Also the speed at tip-up could discriminate between our individual test vehicles when the entire group was loaded to produce a decrease in SSF of 0.05. We used a roof load of about 200 lb to reduce the SSF by 0.05, but the addition of 5 to 6 passengers causes a similar reduction in SSF for typical current generation SUVs, vans and pickup trucks.

Realistic Appearance

Drivers perform NHTSA J-Turns during actual driving on cloverleaf entrance/exit ramps and other, essentially constant radius, curves that are driven at substantial speeds. This maneuver is not given an excellent rating in this category, however, because for light vehicles, actual drivers are very unlikely to use the large steering magnitudes needed to induce two-wheel lift without also applying sustained braking.

During NHTSA's discussions with the automotive industry, every manufacturer stated that they routinely perform J-Turn testing during vehicle development. This maneuver has a long history of industry use.

B. J-Turn With Pulse Braking

Maneuver Description

To perform this maneuver, the programmable steering and braking controller input the handwheel steering and braking commands as shown in Figure 3. Figure 3 also shows a typical vehicle roll rate response resulting from the steering input so as to explain the timing of the brake pulse. Pulse braking was initiated at the first zero crossing (determined by the roll rate being between +1.5 degrees per second and −1.5 degrees per second) of the roll rate after the initiation of steering (*i.e.*, at the time when the maximum roll angle occurs).

The handwheel magnitudes used for the J-Turn with Pulse Braking maneuver were always 330 degrees. The handwheel rate of the handwheel ramp was 1000 degrees per second.

The maximum brake pedal force used for the J-Turn with Pulse Braking maneuver was 200 pounds. The brake pulse durations ranged from 0.25 to 0.55 seconds.

J-Turn with Pulse Braking tests were performed with two directions of steer, to the left and to the right. Vehicle speed was increased in 2 mph increments from 36 to 60 mph, unless simultaneous two-wheel lift was observed.

Objectivity and Repeatability

The J-Turn with Pulse Braking is not as objective and repeatable as the J-Turn due to the pulse braking. Research has shown that the results of this test depend upon the precise timing and magnitude of the brake pulse. Therefore, to perform this maneuver with reasonable objectivity and repeatability, both tightly controlled steering and braking are required. The programmable steering controller needed for the J-Turn has now become a programmable steering and braking controller with a corresponding increase in testing complexity, difficulty, and cost.

Figure 4 shows the Handwheel Angle, Brake Pedal Force, Lateral Acceleration, Longitudinal Acceleration, Roll Angle, and Vehicle Speed, as functions of time for two tests of a 1998 Chevrolet Tracker (this vehicle did not have either antilock brakes or yaw stability control) that were run at approximately the same speed (31.1 and 31.3 mph). Unlike the rest of the data presented in this section, the J-Turn with Pulse Braking data was collected during the summer of 2000 as part of the Phase III–B Rollover research.

Like the NHTSA J-Turn, due to the use of the programmable steering controller, the steering control input was precisely replicated from run-to-run. The apparent non-repeatability in the steering input (and lateral acceleration and roll angle) is actually after the test is over and the driver has retaken control of the vehicle.

Similarly, the Brake Pedal Force graph shows that, by using the programmable braking controller, the braking control input can be precisely replicated from run-to-run. The precisely overlaid lateral acceleration, longitudinal acceleration, roll angle, and vehicle speed traces clearly show the very high repeatability achieved for these two runs.

We caution, however, that data from these two runs is not typical of our experience with maneuver. In general, we saw somewhat more variability in the brake pedal force than is shown in Figure 4. Also, as was discussed above for the NHTSA J-Turn, for runs that are near the point at which two-wheel lift first occurs, roll angle repeatability becomes much worse.

Performability

The addition of pulse braking substantially reduces the performability of this maneuver relative to the NHTSA J-Turn. The addition of a programmable braking controller, which is necessary to achieve the precise pulse brake timing required for repeatable performance, makes this test significantly harder and more costly to run. Issues remain as to the brake pulse timing needed to achieve worst case rollover performance.

Through the use of roll rate feedback, the timing of the brake pulse can be adapted to the characteristics of the vehicle being tested. The magnitude of the steering input can also be adapted from vehicle-to-vehicle (although this was not done during the Phase III research).

Discriminatory Capability

The J-Turn with Pulse Braking is a very bad maneuver for measuring the rollover resistance of different vehicles. For vehicles equipped with antilock braking systems (ABS), it does not appear to give any additional information beyond that obtained from the NHTSA J-Turn maneuver (unless the ABS is disabled; not a realistic situation). For vehicles without ABS, it can be a very severe test vehicle provided the timing of the brake pulse is just right. If this test were used for NCAP, it would discriminate more on the basis of ABS equipment than rollover resistance.

Realistic Appearance

Drivers could perform J-Turns with Pulse Braking during actual driving on cloverleaf entrance/exit ramps and other, essentially constant radius, curves that are driven at substantial speeds. However, we think that the occurrence of this maneuver is unlikely. With the large steering magnitudes needed to induce two-wheel lift, we believe it to be far more probable that drivers will apply sustained braking (which discourages rather than encourages two-wheel lift) instead of pulse braking.

C. Fixed Timing Fishhook

Maneuver Description

To perform this maneuver, the programmable steering controller input the handwheel commands described by Figure 5.

Fixed Timing Fishhook handwheel angle is 6.5 times the handwheel angle that produces a quasi-static 0.3 g lateral acceleration at 50 mph for each particular test vehicle. The commanded dwell (amount of time after the first steer for which handwheel position was maintained) for the Fixed Timing Fishhook was 0.25 seconds. The handwheel rates of the initial steer and countersteer ramps were 720 degrees per second.

Fixed Timing Fishhook tests were performed with both initial directions of steer, to the left and to the right. Vehicle speed was increased in 5 mph increments from 35 to 50 mph, unless at least two inches of simultaneous two-wheel lift was observed. If such wheel lift was detected, entrance speeds were iteratively reduced by 1 mph until it was no longer apparent.

Objectivity and Repeatability

The Fixed Timing Fishhook can be performed with excellent objectivity and repeatability. Figure 6 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for three tests of the Chevrolet Blazer that were run at approximately the same speed (37.8, 37.8, and 37.3 mph). Data from these runs is typical of our experience with this maneuver.

The vehicle speed and lateral acceleration traces clearly show the very high repeatability of this maneuver. The roll angle traces show the non-repeatability in roll angle that occurs around the point of two wheel lift. All three of these runs had two wheel lift approximately three seconds into the test. The amount of two-wheel lift was substantially less for one run than for the other two. Near the initiation of two-wheel lift, the roll angle becomes mathematically unstable because the vehicle either falls over or it does not. As was discussed above for the NHTSA J-Turn, this roll angle non-repeatability occurs for all maneuvers that generate two-wheel lift.

Performability

Objective and repeatable Fixed Timing Fishhook maneuvers can easily be performed using a programmable steering controller. The test procedure is well developed. Procedures have been developed to adapt the steering magnitude used for the Fixed Timing Fishhook maneuver for the characteristics of the vehicle being tested.

Discriminatory Capability

The Fixed Timing Fishhook is excellent maneuver for measuring the rollover resistance of different vehicles. The Chevrolet Blazer and the Mercedes ML320 (with the stability control both enabled and disabled) had two-wheel lift when tested in their Nominal Vehicle configuration. All vehicles (with the stability control, if present, both enabled and disabled) had two-wheel lift when tested in their Reduced Rollover Resistance configuration. (The Mercedes ML320 was not tested in its Reduced Rollover Resistance configuration. However, we are certain that it would have had two-wheel lift in this configuration because it had two-wheel lift in its Nominal Vehicle configuration and raising its center of gravity height is going to encourage, not prevent, two-wheel lifts.) The maneuver initial speed (a severity measure for the Fixed Timing Fishhook) at which two-wheel lifts first occurred varied about as expected.

While the Fixed Timing Fishhook does an excellent job of discriminating between vehicles for typical, current generation, sport utility vehicles, it will not do as good a job for the entire vehicle fleet. It is doubtful that any two-wheel lifts will occur during testing of vehicles that have a Static Stability Factors of 1.2 or greater (*e.g.*, most vehicles that earn three or more stars under NHTSA's current rollover rating program). That said, no driving maneuver known to NHTSA is expected to cause two-wheel lifts for vehicles in the 1.20 SSF range. However, as the name of this maneuver implies, the timing of this maneuver does not change from vehicle-to-vehicle. This will result in some vehicles not being tested with the timing needed to achieve worst case rollover performance.

Realistic Appearance

The Fishhook maneuver's steering input, no matter whether it's the Fixed Timing, Roll Rate Feedback, or Nissan variant, approximates the steering that a driver might perform in an effort to resume traveling in the correct lane of a two lane road after dropping two-wheels off of the road. None of the Fishhooks simulate the effects of the road-edge drop-off.

D. Roll Rate Feedback Fishhook

Maneuver Description

This maneuver is performed similarly to the Fixed Timing Fishhook except for the timing of the steering reversal. Figure 7 shows the handwheel steering input, as a function of time, used for this maneuver. Note that the magnitude of the steering is identical to that of the Fixed Timing Fishhook. However, the steering dwell time (amount of time after the first steer for which handwheel position was maintained) is no longer kept at 0.25 seconds. Instead, this dwell time is varied so as to maximize the severity of the maneuver.

Figure 7 also shows a typical vehicle roll rate response resulting from the steering input so as to explain the timing of the steering reversal. The steering reversal was initiated at the first zero crossing (determined by the roll rate being between +1.5 degrees per second and −1.5 degrees per second) of the roll rate after the initiation of steering (*i.e.*, at the time when the maximum roll angle occurs).

Objectivity and Repeatability

The Roll Rate Feedback Fishhook can be performed with excellent objectivity and repeatability. Occasionally, when performing this maneuver, the measured roll rate does not return to zero for a substantial period of time (1 to 2 seconds) resulting in a greatly delayed countersteer and an invalid test. However, this happens quite rarely, and it is obvious to the test driver when this delay causes the need to repeat the test run. Therefore, from a practical point of view, the objectivity and repeatability of this maneuver was not different from that of the Fixed Timing Fishhook.

Figure 8 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for three tests of the Toyota 4Runner with stability control disabled that were run at approximately the same speed (39.9, 40.3, and 39.5 mph). Data from these runs is typical of our experience with this maneuver.

The vehicle speed and lateral acceleration traces show the high repeatability of this maneuver. The roll angle traces show the non-repeatability in roll angle that occurs around the point of two wheel lift. As the traces show two of these runs had two wheel lift approximately three seconds into the test while one did not. Near the initiation of two-wheel lift, the roll angle becomes mathematically unstable because the vehicle either falls over or it does not. As was discussed above for the NHTSA J-Turn, this roll angle non-repeatability occurs for all maneuvers that generate two-wheel lift.

Performability

Objective and repeatable Roll Rate Feedback Fishhook maneuvers can easily be performed using a programmable steering controller equipped to handle roll rate feedback. The test procedure is well developed. Procedures have been developed to adapt both the steering magnitude and the steering reversal timing used for the Roll Rate Feedback Fishhook maneuver for the characteristics of the vehicle being tested.

Discriminatory Capability

The Roll Rate Feedback Fishhook is excellent maneuver for measuring the rollover resistance of different vehicles. The Chevrolet Blazer and the Mercedes ML320 (with the stability control both enabled and disabled) had two-wheel lift when tested in their Nominal Vehicle configuration. All vehicles (with the stability control, if present, both enabled and disabled) had two-wheel lift when tested in their Reduced Rollover Resistance configuration. (The Mercedes ML320 was not tested in its Reduced Rollover Resistance configuration. However, we are certain that it would have had two-wheel lift in this configuration because it had two-wheel lift in its Nominal Vehicle configuration and raising its center of gravity height is going to encourage, not prevent, two-wheel lifts.) The maneuver initial speed (a severity measure for the Roll Rate Feedback Fishhook) at which two-wheel lifts first occurred varied about as expected.

While the Roll Rate Feedback Fishhook does an excellent job of discriminating between vehicles for typical, current generation, sport utility vehicles, as explained above for the Fixed Timing Fishhook, it will not do as good a job for the entire vehicle fleet.

Realistic Appearance

See the Fixed Timing Fishhook maneuver Realistic Appearance discussion.

E. Nissan Fishhook

Maneuver Description

The Nissan Fishhook adds to the Fixed Timing Fishhook a procedure for adjusting the steering reversal timings to the vehicle being tested. This adjustment process has the same goal as the adjustment process used for the Roll Rate Feedback Fishhook, *i.e.*, to test each vehicle with the steering reversal timing required for the vehicle to have its worst case rollover performance. While the Roll Rate Feedback Fishhook maneuver accomplishes this by using roll rate feedback resulting in only one test run per initial maneuver speed, the Nissan Fishhook uses an iterative procedure to determine the timing.

First, a J-Turn is performed followed by a series of Fixed Timing Fishhooks (with different timings). Typically, two to four runs will be made for each initial maneuver speed. The procedure used to determine the final timing is too complex to give here but is fully described in the NHTSA technical report ''Another Experimental Examination of Selected Maneuvers That May Induce On-Road Untripped, Light Vehicle Rollover—Phase IV of NHTSA's Light Vehicle Rollover Research Program.'' However, the final dwell times (the length of the pause between

completion of the first steer and the initiation of the countersteer, shown as time, T_1, in Figures 5 and 7) generated were close to those of the Roll Rate Feedback Fishhook.

Objectivity and Repeatability

The Nissan Fishhook was performed with good objectivity and repeatability. By using the programmable steering machine, handwheel inputs were precisely executed, and able to be replicated from run-to-run. Test drivers were able to achieve maneuver entrance speeds an average of ± 0.9 mph from the desired target speed.

Note that the Objectivity and Repeatability rating of the Nissan Fishhook maneuver was reduced from that assigned to the Fixed Timing Fishhook. This was due to roll rate zero-crossing variability observed in response to the step steer used in determining the timing of the maneuver. The Nissan Fishhook requires accurate determination of the third roll rate zero-crossing following input of the step steer. This is because zero crossing variability directly affects what dwell time duration will ultimately satisfy Nissan's requirements. If the third roll rate zero crossing is delayed (*e.g.*, due to an anomalous response produced during the step steer) an inappropriate dwell time extension will result.

Generally speaking the vehicle speed, lateral acceleration, and roll angle data observed during Nissan Fishhook tests were highly repeatable. However, as was discussed above for the NHTSA J-Turn, for runs that are near the point at which two-wheel lift first occurs, roll angle repeatability becomes much worse.

Performability

The Nissan Fishhook has a well worked out test procedure. It does not have a procedure to adapt the steering magnitude for the characteristics of the vehicle being tested although this could probably be added to the current test procedure without difficulty. The steering reversal timings used for the Nissan Fishhook maneuver are adjusted for the vehicle being tested.

The primary advantage of the Nissan Fishhook over the Roll Rate Feedback Fishhook is that by not using roll rate feedback you avoid the occasional need for repetitions caused by anomalies in the roll rate measurement and the extra expense of a programmable steering controller that can handle roll rate feedback.

The primary disadvantage of the Nissan Fishhook over the Roll Rate Feedback Fishhook is that the Nissan procedure requires three to four times as many test runs than does the Roll Rate Feedback Fishhook. As a result, greater tire wear occurs which has been shown to affect the results of Fishhook testing. It also increases testing time and costs.

The Nissan Fishhook, as proposed by Nissan, uses a very high steering wheel angle rate (1,080 degrees per second). Our programmable steering controller has some difficulty with such a high rate. Changing to the lower steering wheel angle rate (720 degrees per second) used for the Fixed Timing and Roll Rate Feedback Fishhooks would probably only minimally affect maneuver results. Reduction of the magnitude of the countersteer to the amount used for the Fixed Timing and Roll Rate Feedback Fishhooks should slightly increase maneuver severity. Our experience has been that the large countersteer used by the Nissan Fishhook slows the vehicle down more rapidly, decreasing maneuver severity.

Discriminatory Capability

The Nissan Fishhook was an excellent maneuver for measuring the rollover resistance of different vehicles. The dynamic rollover propensity of only the Chevrolet Blazer and Ford Escape was assessed using the Nissan Fishhook, and all tests were performed in the Nominal Load condition. Two-wheel lift was produced during tests performed with the Chevrolet Blazer.

The results obtained with Nissan's methodology were in good agreement with those produced during Fixed Timing and Roll Rate Feedback Fishhook testing. That said, the entrance speed of the Nissan Fishhook test for which two-wheel lift occurred was approximately 6 mph higher than that of either of the other Fishhooks.

While the Nissan Fishhook does an excellent job of discriminating between vehicles for typical, current generation, sport utility vehicles, as explained above for the Fixed Timing Fishhook, it will not do as good a job for the entire vehicle fleet.

Realistic Appearance

See the Fixed Timing Fishhook maneuver Realistic Appearance discussion.

F. Ford Path Corrected Limit Lane Change

Maneuver Description

Ford's procedure is a path specific method composed of an array of double lane change courses and a data-normalizing technique used to address driver variability. It results in a metric based on dynamic weight transfer.

Ford believes that a path specific method, wherein test vehicles navigate a standard set of paths, is preferable to maneuvers that employ open loop steering. Ford states that a specific path provides a basis for comparison of the resulting metrics. By ensuring that all vehicles experience the same magnitude of lateral acceleration, the effects of surface variability on test results are negated. Ford suggests that 0.7g is an appropriate target for lateral acceleration. Its suite of specific paths exercises vehicles through a range of frequencies and amplitudes at the proposed target lateral acceleration.

Three markers (short traffic cones) placed on the pavement delimit the path's lane change apertures with the middle marker representing an avoidance obstacle. Varying the position of the obstacle laterally and longitudinally (with corresponding longitudinal repositioning of the exit marker) produces an array of steering input amplitudes and frequencies. A test vehicle approaches the course at 45 mph. The driver releases the throttle at the course entrance and coasts while steering through the course. Figure 9 portrays the suite of double lane change paths to the left used for this maneuver. A similar suite of double lane change paths to the right is also tested.

Ford addresses driver and test surface variability with the Path Corrected Limit Lane Change (PCLLC) normalizing technique. The mathematical procedure is executed during post-processing of test data and is used "to normalize the varying results of physical tests to a uniformly based metric." [8] The results indicate how the various vehicles would perform had they followed the exact same path.

Ford states, "Post-test computer aided normalizing techniques have been sufficiently developed that we have high confidence in their applicability to this issue. The PCLLC technique uses physical test data to define a vehicle-specific transfer function. These functions are then used to normalize metric values, such as dynamic weight transfer, to a specific vehicle path common to all vehicles evaluated. The data suggests that use of these normalizing techniques eliminates concerns that may arise because of test driver variability and by subjecting the vehicles to the same path, help to eliminate track surface variability, thus providing the only dynamic test method and metric unaffected by these sources of variability. We [Ford] believe this is a technically sound method to achieve reliable, repeatable and objectively stated results that will improve upon SSF based star ratings." [9]

Ford reports that an analysis of the results of the normalizing technique shows that, despite varying styles of driving indicated by measurement of peak steering wheel angles and rates, the differences in the mean values of Dynamic Weight Transfer Metric (DWTM) among four test drivers driving the same vehicle are not statistically significant.

Ford has allowed NHTSA to evaluate the PCLLC technique under a confidentiality agreement. Thus, details of the procedure are not available for this notice. NHTSA expects that Ford would make the details of the procedure public if it proposed that Ford's test protocol as the dynamic rollover test mandated by the TREAD Act.

Ford proposes a rollover resistance metric based on dynamic lateral weight transfer. Ford defines dynamic weight transfer as the "percentage of weight that is removed from a vehicle's two inside tires during a severe lane change." [10] The Dynamic Weight Transfer Metric (DWTM) is the maximum percent of dynamic weight transfer averaged over a minimum specific time. Ford recommends a minimum specific time of 400 milliseconds.

Objectivity and Repeatability

The Path Corrected Limit Lane Change maneuver consists of a series of closed-loop

[8] Copied from Page 4 of Ford Motor Company's submission of August 16, 2001 in response to NHTSA notice Consumer Information Regulations; Rollover Resistance, Docket No. NHTSA–2001–9663 (66 Fed. Reg. 35179–35193, July 3, 2001). Referred to subsequently as Ford's 2001 Rollover Comments.

[9] Copied from Page 5 of Ford's 2001 Rollover Comments.

[10] Copied from Page 1 of a Ford Motor Company memorandum titled "Dynamic Weight Transfer Results from Path-Corrected Limit Lane Change Joint Testing with NHTSA." Referred to subsequently as Ford's PCLLC Report.

(test driver generated steering inputs) double lane changes. Data collected during these double lane changes is then processed ''to assure that all vehicles follow the same path and are subject to the same acceleration demands.'' [11] For reasons that are discussed below in the Discriminatory Capability subsection for this maneuver, Ford Motor Company (Ford) recommends the calculation of a Dynamic Weight Transfer Metric (DWTM) at 0.7 g lateral acceleration for this maneuver. ''Because different vehicle designs will react differently to forces of varying magnitude and time duration, a suite of various paths should be analyzed in determining an overall dynamic weight transfer metric (DWTM), based on values of maximum weight transfer.'' [12] Note that higher values of DWTM are worse than lower values.

Ford has performed a substantial amount of Path Corrected Limit Lane Change maneuver testing. While we do not have access to this data, Ford has summarized this data as follows: ''Ford's overall standard deviation for the DWT metric is 4.4 from multiple tests made on a variety of vehicles with a variety of drivers, over a time span of several months and using a new set of tires fitted for each test.'' [13] To understand the meaning of this standard deviation, we need to know the expected range of the dynamic weight transfer metric.

The most basic way to estimate this range is to approximate the vehicle as a rigid block in a steady state curve at 0.7g lateral acceleration. Using this approximation, the expected range of DWTM values is from 46.7 percent (corresponding to a vehicle with a static stability factor of 1.50) to 70.0 percent (corresponding to a static stability factor of 1.00).

Real vehicles, of course, are not rigid bodies. They have compliant suspensions and tires. This increases the DWTM values from those of rigid vehicles. Based on NHTSA's Tilt Table data and assumptions about the difference between tilt table and flat track testing, we estimate an addition of about 4% to 8% DWTM to the rigid body calculations as a result of quasi-static body roll at 0.7 g. Applying the average addition of 6% DWTM makes the expected range of DWTM approximately 53 percent to 76 percent. Therefore, Ford's standard deviation of 4.4 for DWTM is 19 percent of the entire expected range of DWTM values.

Another way to understand the meaning of this standard deviation is to analyze the values of DWTM that were measured by Ford and NHTSA during joint testing of the Phase IV rollover test vehicles. Table 1 lists these values, along with the number of observations that these values are based on, the calculated dynamic weight transfer at 0.7 g lateral acceleration based on a rigid body model, and the difference between these two dynamic weight transfer values.

Consider the Chevrolet Blazer and the Ford Escape. The Blazer receives one star; the lowest rating a for sport utility vehicle from NHTSA's current rollover rating system (which is based on Static Stability Factor). The Ford Escape has an SSF at the high end of the three star range; one of the higher ratings for sport utility vehicles. Most sport utility vehicles have Static Stability Factors between these two vehicles.

TABLE 1.—MEASURED AND CALCULATED DYNAMIC WEIGHT TRANSFERS [14]

	2001 Chevrolet Blazer	2001 Ford Escape	1999 Mercedes ML320 with ESC on	1999 Mercedes ML320 with ESC off	2001 Toyota 4Runner with ESC on	2001 Toyota 4Runner with ESC off
PCLLC Measured DWTM (in percent)	70.3	62.9	74.8	68.2	66.2	66.6
Number of Observations	4	4	4	10	4	4
Steady State Rigid Body WT Calculated from SSF (in percent)	67.3	55.6	60.9	60.9	63.1	63.1
Difference (in percent)	3.0	7.3	13.9	7.3	3.1	3.5

Now compare the DWTM values of these vehicles as measured using the Path Corrected Limit Lane Change and shown in Table 1. For the Chevrolet Blazer the measured DWTM value is 70.3. However, based on Ford's standard deviation and the number of samples, we have 95 percent confidence that the DWTM for this vehicle is between 66.0 and 74.6. Similarly, for the Ford Escape we have 95 percent confidence that the DWTM is between 58.6 and 67.2. Note that these ranges overlap. However, the difference between these two vehicles DWTM values is statistically significant (although just barely having a t-value of 2.38 versus the critical t-value of 2.37).

A measurement standard deviation for which the difference between a sport utility vehicle with high rollover resistance and one with low rollover resistance is only marginally statistically significant is too large for generating vehicle ratings.

Table 1 shows another problem with the measured DWTM values. When we estimated the expected range of DWTM as 53 percent to 76 over the entire range of vehicles from SUVs to sport sedans, we considered only the quasi-static load transfer due to the vehicle's rigid body geometry (SSF) and to its steady state body roll. We neglected the dynamic weight transfer that occurs as a result of body roll acceleration in an abrupt maneuver. However, when the calculated steady state, rigid body weight transfer in Table 1 is subtracted from the measured DWTM, the difference is no more than that expected for the steady state body roll in all but one case. It would appear that the Dynamic Weight Transfer Metric produced by PCLLC generally measures quasi-static rather than dynamic weight transfer. Quasi-static weight transfer is what occurs when a vehicle is driven in a circle at a constant speed without abrupt changes in speed or direction.

The exception is the DWTM measurement for the Mercedes ML320 with yaw stability control enabled. While the DTWM for this vehicle with yaw stability control disabled is no more than the expected quasi-static load transfer, the DTWM increases by 6.6 percent when the yaw stability control is enabled. The difference between these two values is statistically significant and would seem to represent a dynamic weight transfer component missing in the other PCLLC results in Table 1. However, it is hard to understand why stability control should lower the rollover resistance of this vehicle. Fishhook testing indicates just the opposite; that yaw stability control increases the rollover resistance of this vehicle. Therefore, we believe that the measured DWTM value for the Mercedes ML320 with yaw stability control enabled is incorrect.

In conclusion, the objectivity and repeatability of the Path Corrected Limit Lane Change has not yet attained an acceptable level for rating the rollover resistance of vehicles. Future improvements to the objectivity and repeatability of this maneuver can probably be made, but there are other tests with more potential for making highly objective and repeatable measurements of quasi-static weight transfer.

Performability

The procedure for performing this test is straight-forward. However, substantial additional instrumentation, over and above that required to perform a Fishhook maneuver, are required. The costs and additional testing time associated with this equipment is expected to exceed the costs and additional testing time saved by not having to use a programmable steering controller. An additional test, on a tire testing machine, is also required.

Ford has ideas for reducing the additional instrumentation required for the Path Corrected Limit Lane Change procedure. However, this is a future enhancement and cannot be evaluated at this time.

[11] Copied from Page 3 of Ford's 2001 Rollover Comments.

[12] Copied from Page 1 of Appendix III of Ford's 2001 Rollover Comments.

[13] Copied from Page 2 of Ford's PCLLC Report.

[14] Values taken from Page 2 of Ford's PCLLC Report.

Since Ford processed the data collected during our testing, we are unable to say how difficult the data processing is to perform. However, with experience and the correct software it is expected to approximately equal the effort required to process data from a Fishhook or J-Turn test. There may be issues in making Ford's data processing software publicly available.

Due to the use of a suite of paths for calculating DWTM values, the Path Corrected Limit Lane Change procedure should adequately adapt to differing vehicle characteristics.

We also have concerns about determining dynamic weight transfer as an average value over a 400 millisecond window. The use of this broad a window may filter out dynamic effects that may be important in actual vehicle rollovers.

Discriminatory Capability

No two-wheel lifts occurred during Path Corrected Limit Lane Change testing for any of the test vehicles. However, unlike the J-Turn and Fishhook maneuvers, the occurrence/non-occurrence of two-wheel lift is not used as a measure of vehicle performance for this maneuver. The DWTM measured in PCLLC testing produces a continuous measure of rollover resistance that, like SSF, that allows discrimination even among vehicles that are not susceptible to on-road untripped rollover.

Ford recommends the calculation of a Dynamic Weight Transfer Metric (DWTM) at 0.7 g lateral acceleration as a measure of vehicle performance for this maneuver. Data collected during testing is processed to remove driver effects by having all vehicles always follow the same specified paths and be subject to the same acceleration demands. ''Because different vehicle designs will react differently to forces of varying magnitude and time duration, a suite of various paths should be analyzed in determining an overall dynamic weight transfer metric (DWTM), based on values of maximum weight transfer.'' [15] Ford's reasons for making this recommendation are as follows:

''For a given velocity change, various vehicle related factors determine the magnitude of dynamic weight transfer for events that can lead to both tripped or un-tripped rollover. Obviously, the higher the center-of-gravity, the greater the transfer for a given travel velocity change. Similarly, the smaller the track width, the greater the transfer. As is well known, many factors other than these two affect dynamic weight transfer and it is because of this that SSF is a narrow and inadequate concept. For example, if deflections occur in suspensions, tires, or other parts that control overall body movements such as active stabilizer bars or electronically controlled shock absorbers, when dynamic forces are applied, the magnitude of the dynamic weight transfer will also change. Inertial values, yaw plane motions, vertical motions and pitch plane motions that arise because of a vehicle's design details or features can affect force and moment balances and can change vehicle configurations to affect the magnitude of the dynamic weight transfer. It is a directionally correct proposition that the greater the magnitude of the dynamic weight transfer in a given high severity event, the less margin, reserve, or resistance remains to a rollover occurring. Based on these principles, Ford believes that dynamic weight transfer is a metric of value in a dynamic test.'' ''Our preliminary work has confirmed that this metric will discriminate among specific vehicles within a class and between classes of vehicles. We submit that DWTM is a more reliable metric than SSF alone.'' [16]

DWTM has the theoretical advantage over SSF of including load transfer due to quasi-static body roll and true dynamic load transfer due to body roll accelerations, but its measurement by the PCLLC method seems to be lacking the dynamic load transfer component. The PCLLC test also is not able to test for the effect of yaw stability control. In its comment to the docket of the last notice, Ford suggested that the same 0.7g lane change maneuvers and DTWM could be implemented directly with an advanced path following robot rather than with the PCLLC method, but it cautioned that the test would not evaluate the effect of yaw stability control. In light of this comment, it is not surprising that the PCLLC test measured no effect of yaw stability control of Toyota 4Runner, but it remains troubling that it measured a significant loss of rollover resistance for yaw stability control of the Mercedes ML320 contrary to its effect measured in other rollover maneuver tests.

As discussed above, we do not believe that dynamic weight transfer values determined using this maneuver have, so far, attained an acceptable level of repeatability. We are also concerned about not exercising vehicles to the limits of their performance. By not taking vehicles to their limits, some important limit performance problems could be overlooked.

Realistic Appearance

In general, double lane change maneuvers have an excellent appearance of reality. These are the emergency obstacle avoidance maneuvers that people think of first when they consider untripped rollover. While the Path Corrected Limit Lane Change trajectories are idealized, rather than actual, this distinction would likely not be noticed by consumers.

G. ISO 3888 Part 2 Double Lane Change

Maneuver Description

To perform ISO 3888 Part 2 Double Lane Change testing, the vehicle was driven through the course shown in Figure 10. The driver released the throttle 6.6 ft (2.0 m) from the entrance of the first lane. No throttle input or brake application occurred during the remainder of maneuver.

Drivers iteratively increased maneuver entrance speed from approximately 35 mph in 1 mph increments. The iteration continued until valid tests could no longer be performed (lane position could not be maintained without striking cones). Each driver was required to perform three valid runs at their maximum speed. This was to assess input and output variability for tests performed by the same driver with the same entrance speed.

The manner in which the 1 mph iterations were implemented was somewhat driver-dependent. Some drivers preferred to increase speed until they could no longer achieve a valid test. Once this threshold was reached, the driver would reduce speed slightly and perform three valid tests. Other drivers would perform three valid tests at one speed before proceeding to the next iteration. Both methods produced similar results.

So as to examine driver-to-driver differences, during the Phase IV research, this maneuver was performed for each vehicle by three drivers. To reduce any confounding effect tire wear may have on ISO 3888 Part 2 Double Lane Change test results, a new tire set was installed on each vehicle, for each driver.

Objectivity and Repeatability

Since steering inputs for the ISO 3888 Part 2 Double Lane Change maneuver are generated by the test driver, vehicle performance in this maneuver depends upon the skill of the test driver, the steering strategy used by the test driver, plus random run-to-run fluctuations.

The ISO 3888 Part 2 Double Lane Change maneuver attempts to minimize this variability through the use of an in-between lane of substantial length and very tight entry, exit, and in-between lanes, thereby minimizing a driver's steering options for getting through the course without striking delineating cones.

Figure 11 shows the range of handwheel steering angles used by three different test drivers while performing this maneuver multiple times while Figure 12 shows the range of handwheel steering angles used by these drivers at selected times during this maneuver. As these figures show, there are both substantial driver-to-driver differences and substantial within driver run-to-run differences in the steering inputs. These differences tend to increase as the maneuver progresses.

Arguably, the differences in steering inputs shown in Figure 11 and 12 do not really matter for the purposes of determining Rollover Resistance Ratings. What really matters are driver-to-driver differences in vehicle outputs, specifically the vehicle rating metrics.

The rating metric suggested by the Daimler-Chrysler Corporation is the maximum entry speed into the test course at which a driver successfully achieved a ''clean'' run. (A ''clean'' run is one during which none of the cones delineating the course were struck.)

Table 2 shows the maximum achievable ''clean'' run speeds for three test drivers for the Nominal Vehicle configuration for each of the Phase IV rollover test vehicles. (While each vehicle was tested by three drivers, four drivers actually participated in this testing.) Note that higher values of this metric indicate a better performing vehicle.

[15] Copied from Page 1 of Appendix III of Ford's 2001 Rollover Comments.

[16] Copied from Pages 5 and 6 of Ford's 2001 Rollover Comments.

TABLE 2.—MAXIMUM ACHIEVABLE ''CLEAN'' RUN SPEEDS FOR THE ISO 3888 PART 2 DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer (mph)	2001 Ford Escape (mph)	1999 Mercedes ML320 with ESC on (mph)	1999 Mercedes ML320 with ESC off (mph)	2001 Toyota 4Runner with ESC on (mph)	2001 Toyota 4Runner with ESC off (mph)
GF/RS	39.0	36.9	38.0	37.2	37.6	35.9
LJ	40.0	36.6	37.0	36.7	36.7	35.3
RL	41.0	38.0	36.8	37.8	35.8	37.0
Range	2.0	1.4	1.2	1.1	1.8	1.7

Table 3 shows a rank ordering of the Phase IV rollover test vehicles based on the maximum ''clean'' run speeds achieved by the test drivers. Note that 1 is the best rank and 6 the worst.

TABLE 3.—VEHICLE RANKINGS BASED ON MAXIMUM ACHIEVABLE ''CLEAN'' RUN SPEEDS FOR THE ISO 3888 PART 2 DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer	2001 Ford Escape	1999 Mercedes ML320 with ESC on	1999 Mercedes ML320 with ESC off	2001 Toyota 4Runner with ESC on	2001 Toyota 4Runner with ESC off
GF/RS	1	5	2	4	3	6
LJ	1	5	2	3	3	6
RL	1	2	5	3	6	4

As Table 2 shows, for the drivers used, the range of maximum achievable ''clean'' run entry speeds varied from 1.2 mph for the 1999 Mercedes ML320 with yaw stability control enabled to 2.0 mph for the 2001 Chevrolet Blazer. The average range was 1.5 mph. While these may seem like small ranges, the entire best-to-worst range in Table 2 is only 5.7 mph. Since we tested a fairly broad range of sport utility vehicles during the Phase IV research, the maximum achievable ''clean'' run speeds for most sport utility vehicles are expected to be in this 5.7 mph range. Therefore, driver-to driver variability averages 27 percent of the range of the rating metric and can be as much as 35 percent.

The problem caused by driver-to-driver variability combined with the small range of metric values is clearly shown by Table 3. While the Chevrolet Blazer attained the best ranking from all three test drivers, the ranking for the Mercedes ML320 with yaw stability control enabled varied from second best to second worst.

Driver skills and abilities vary with time. Although we did not do such testing, if we retested the Phase IV rollover test vehicles with the same test drivers performing the ISO 3888 Part 2 Double Lane Change maneuver we anticipate that our results would not exactly match those shown in Tables 2 and 3. Since we have such a small range for the rating metric day-to-day (or even hour-to-hour) changes in test driver performance would probably change the maximum achievable ''clean'' run entry speeds by a substantial percentage of the overall range.

Due to the problems associated with driver-to-driver variability and run-to-run for the same driver variability, the objectivity and repeatability of this maneuver is poor.

Performability

The procedure for performing this test is straight-forward. However, as discussed above, this maneuver has objectivity and repeatability issues. Resolving these issues adds difficulty and complexity to performing these tests.

For example, one possibility for improving objectivity and repeatability is to use multiple drivers to perform the testing (three drivers were used during the Phase IV testing). While this should help, there are still potential problems. One exceptionally skilled test driver could generate very good performance metrics for a mediocre vehicle. If this exceptionally skilled driver did not test some other vehicle, that vehicle's performance metrics might, incorrectly, be lower than they should be. Therefore, in addition to using multiple drivers, procedures would need to be developed to ensure that every vehicle is tested by drivers of approximately equal skill.

The ISO 3888 Part 2 Double Lane Change test procedure includes adjustments to lane width and lane change gate length for differing vehicle sizes. These should adequately adapt this maneuver for differing vehicle characteristics.

Discriminatory Capability

No two-wheel lifts occurred during any ''clean'' run of ISO 3888 Part 2 Double Lane Change testing for any of the test vehicles. (A ''clean'' run is one during which none of the cones delineating the course were struck.) While some two-wheel lifts did occur during runs that were not ''clean'', these should not be considered for the determination of our rollover resistance ratings. The reason is that when a run is not ''clean'', there is no way to determine whether the vehicle comes close to following the test course. For example, a driver could perform a fishhook maneuver or simply drive straight through. Either case would simply be recorded as not a ''clean'' run.

Unlike the J-Turn and Fishhook maneuvers, the occurrence/non-occurrence of two-wheel lift cannot be used as a measure of vehicle performance for this maneuver because two-wheel lifts during a clean run appear very unlikely for any NCAP vehicle. The rating metric suggested by the DaimlerChrysler Corporation (Daimler) is the maximum entry speed into the test course at which a driver successfully achieved a ''clean'' run.

Table 4 shows the maximum achievable ''clean'' run speeds attained by any of the test drivers for both the Nominal Vehicle and Reduced Rollover Resistance configuration for each of the Phase IV rollover test vehicles. Note that higher values of this metric indicate a better performing vehicle.

The Reduced Rollover Resistance configuration vehicles have had weights placed on the roof so as to raise the center of gravity height. Their Static Stability Factors have been reduced by 0.05. A 0.05 reduction in SSF equates, for sport utility vehicles, to approximately a one star reduction in the vehicle's rollover resistance rating. As was previously stated, NHTSA believes that a one star reduction in the rollover resistance rating should make a vehicle substantially easier to rollover. Maneuvers with good discriminatory capability should measure substantially worse performance for Reduced Rollover Resistance the configuration than for the Nominal Vehicle configuration.

TABLE 4.—MAXIMUM ACHIEVABLE ''CLEAN'' RUN SPEEDS BY ANY DRIVER FOR THE ISO 3888 PART 2 DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE AND REDUCED ROLLOVER RESISTANCE CONFIGURATIONS

Test driver	2001 Chevrolet Blazer (mph)	2001 Ford Escape (mph)	1999 Mercedes ML320 with ESC on (mph)	1999 Mercedes ML320 with ESC off (mph)	2001 Toyota 4Runner with ESC on (mph)	2001 Toyota 4Runner with ESC off (mph)
Nominal Vehicle Configuration	41.0	38.0	38.0	38.9	37.6	37.0
Reduced Rollover Resistance Configuration	39.0	37.3	37.4	37.1	39.3	38.0
Difference	2.0	0.7	0.6	1.8	−1.7	−1.0

This expected substantial change in rollover resistance ratings is not seen for the ISO3888 Part 2 Double Lane Change maneuver. For three of the vehicles the maximum achievable ''clean'' run speeds attained by any of the test drivers in the Reduced Rollover Resistance configuration vehicles did decrease slightly compared to the Nominal Configuration vehicles while for the 2001 Toyota 4Runner they increased slightly. The average change was only 0.4 mph, far less than the average driver-to-driver variability of 1.5 mph.

The expected substantial change in rollover resistance measurement was not observed for the ISO3888 Part 2 Double Lane Change maneuver apparently because the sensitivity of the test to handling properties is predominant compared to its sensitivity to rollover resistance. Placing weight on a vehicle's roof raises its center of gravity height which reduces its rollover resistance. However, doing this also increases a vehicle's mass and roll moment of inertia, resulting in changes to a vehicle's handling that are not well understood. Since handling and rollover resistance are inextricably intertwined in the rating produced by this maneuver, the rating generated can improve even though the rollover resistance of a vehicle is getting worse.

Results from both J-Turn and Fishhook testing are, of course, also influenced by the handling characteristics of the vehicle. However, handling has less of a chance to dominate these maneuvers because they involve fewer major steering movements (one for a J-Turn, two for a Fishhook, and three for a Double Lane Change).

The above reasoning also explains an apparent anomaly in Table 3. In this table, the Chevrolet Blazer has the best ranking of any of the vehicles. However, based on its one star rating and performance in the NHTSA J-Turn and Fishhooks, we believe it to have the lowest rollover resistance of any of the Phase IV rollover test vehicles. The apparent contradiction is resolved once we realize that the ISO3888 Part 2 Double Lane Change maneuver measures mostly the handling rather than rollover resistance of vehicles.

Realistic Appearance

In general, double lane change maneuvers have an excellent appearance of reality. These are the emergency obstacle avoidance maneuvers that people think of first when they consider untripped rollover.

H. Consumers Union Short Course Double Lane Change

Maneuver Description

To perform Consumers Union Short Course Double Lane Change testing, the vehicle was driven through the course shown in Figure 13. As the vehicle approached the course entrance, the driver released the throttle so as to achieve a desired target speed as the vehicle passed over a timing strip 35 feet from the entrance of the first lane. Otherwise, the procedure for this maneuver was identical to that used for the ISO 3888 Part 2 Double Lane Change testing.

Objectivity and Repeatability

Since steering inputs for the Consumers Union Short Course Double Lane Change maneuver are generated by the test driver, vehicle performance in this maneuver depends upon the skill of the test driver, the steering strategy used by the test driver, plus random run-to-run fluctuations.

Figure 14 shows the range of handwheel steering angles used by three different test drivers while performing this maneuver multiple times while Figure 15 shows the range of handwheel steering angles used by these drivers at selected times during this maneuver. As these figures show, there are both substantial driver-to-driver differences and substantial within driver run-to-run differences in the steering inputs. These differences tend to increase as the maneuver progresses.

Arguably, the differences in steering inputs shown in Figures 14 and 15 do not really matter for the purposes of determining Rollover Resistance Ratings. What really matters are driver-to-driver differences in vehicle outputs, specifically the vehicle rating metrics.

The rating metric used by NHTSA is the maximum entry speed into the test course at which a driver successfully achieved a ''clean'' run. (A ''clean'' run is one during which none of the cones delineating the course were struck.) Note that this is not the rating metric used by Consumers Union for this maneuver; Consumers Union performs subjective rating of the emergency handling capability of vehicles with vehicles that have large amounts of two-wheel lift in this maneuver receiving an ''unacceptable'' safety rating.

Table 5 shows the maximum achievable ''clean'' run speeds for three test drivers for the Nominal Vehicle configuration for the Phase IV rollover test vehicles. Note that higher values of this metric indicate a better performing vehicle.

TABLE 5.—MAXIMUM ACHIEVABLE ''CLEAN'' RUN SPEEDS FOR THE CONSUMERS UNION SHORT COURSE DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer (mph)	2001 Ford Escape (mph)	1999 Mercedes ML320 with ESC on (mph)	1999 Mercedes ML320 with ESC off (mph)	2001 Toyota 4Runner with ESC on (mph)	2001 Toyota 4Runner with ESC off (mph)
GF	39.3	37.0	38.8	36.7	36.5	37.7
LJ	38.1	37.1	37.1	36.6	37.4	35.7
RL	40.7	40.5	39.2	38.3	37.8	37.8
Range	2.6	3.5	1.7	1.7	1.3	2.1

Table 6 shows a rank ordering of the Phase IV rollover test vehicles based on the maximum ''clean'' run speeds achieved by the three test drivers. Note that 1 is the best rank and 6 the worst.

TABLE 6.—VEHICLE RANKINGS BASED ON MAXIMUM ACHIEVABLE ''CLEAN'' RUN SPEEDS FOR THE CONSUMERS UNION SHORT COURSE DOUBLE LANE CHANGE MANEUVER—NOMINAL VEHICLE CONFIGURATION

Test driver	2001 Chevrolet Blazer	2001 Ford Escape	1999 Mercedes ML320 with ESC on	1999 Mercedes ML320 with ESC off	2001 Toyota 4 Runner with ESC on	2001 Toyota 4 Runner with ESC off
GF	1	4	2	5	6	3
LJ	1	3	3	5	2	6
RL	1	2	3	4	5	5

As Table 5 shows, for three test drivers used, the range of maximum achievable ''clean'' run entry speeds varied from 1.3 mph for the 2001 Toyota 4Runner with yaw stability control enabled to 3.5 mph for the 2001 Ford Escape. The average range was 2.2 mph. While these may seem like small ranges, the entire best-to-worst range in Table 5 is only 5.0 mph. Since we tested a fairly broad range of sport utility vehicles during the Phase IV research, the maximum achievable ''clean'' run speeds for most sport utility vehicles are expected to be in this 5.0 mph range. Therefore, driver-to driver variability averages 44 percent of the range of the rating metric and can be as much as 70 percent.

The problem caused by driver-to-driver variability combined with the small range of metric values is clearly shown by Table 6. While the Chevrolet Blazer attained the best ranking from all three test drivers, the ranking for the Toyota 4Runner with yaw stability control enabled varied from second best to worst.

Driver skills and abilities vary with time. Although we did not do such testing, if we retested the Phase IV rollover test vehicles with the same test drivers performing the Consumers Union Short Course Double Lane Change maneuver we anticipate that our results would not exactly match those shown in Tables 4 and 5. Since we have such a small range for the rating metric day-to-day (or even hour-to-hour) changes in test driver performance would probably change the maximum achievable ''clean'' run entry speeds by a substantial percentage of the overall range.

Due to the problems associated with driver-to-driver variability and run-to-run for the same driver variability, the objectivity and repeatability of this maneuver are poor. However, it is important to recognize that NHTSA's objective for this maneuver, the determination of rollover resistance ratings, is not the same as Consumers Union's objective, the evaluation of a vehicle's emergency handling capabilities. Handling evaluation has always been a subjective process. This appears to be a better maneuver for what Consumers Union wants to accomplish than for what the NHTSA wants to accomplish.

Performability

The procedure for performing this test is straight-forward. However, as discussed above, this maneuver has objectivity and repeatability issues. Resolving these issues adds difficulty and complexity to performing these tests.

For example, one possibility for improving objectivity and repeatability is to use multiple drivers to perform the testing (three drivers were used during the NHTSA testing). While this should help, there are still potential problems. One exceptionally skilled test driver could generate very good performance metrics for a mediocre vehicle. If this exceptionally skilled driver did not test some other vehicle that vehicle's performance metrics might, incorrectly, be lower than they should be. Therefore, in addition to using multiple drivers, procedures would need to be developed to ensure that every vehicle is tested by drivers of approximately equal skill.

The Consumers Union Short Course Double Lane Change test procedure does not change from vehicle-to-vehicle. This reflects Consumers Union's reason for developing this maneuver; as a test of emergency handling. On an actual road, if an obstacle suddenly intrudes into a vehicle's lane requiring emergency maneuvering to avoid, the parameters of the intrusion (distance ahead of oncoming vehicle at which the intrusion begins, amount of intrusion) do not depend on the characteristics of the oncoming vehicle. In other words, if a child runs out in front of you, they do not run out sooner because your vehicle is bigger or wider.

However, NHTSA has a different purpose. We are trying to rate a vehicle resistance to rollover. As such, we would like to test with worst case lane geometry. This may well change with vehicle size or other characteristics. Therefore, for NHTSA's purpose, we believe that a test maneuver should adapt for differing vehicle characteristics.

Discriminatory Capability

No two-wheel lifts occurred during any ''clean'' run of Consumers Union Short Course Double Lane Change testing for any of the test vehicles. (A ''clean'' run is one during which none of the cones delineating the course were struck.) While some two-wheel lifts did occur during runs that were not ''clean'', these should not be considered for the determination of our rollover resistance ratings. The reason is that when a run is not ''clean'', there is no way to determine whether the vehicle comes close to following the test course. For example, a driver could perform a fishhook maneuver or simply drive straight through. Either case would simply be recorded as not a ''clean'' run.

Unlike the J-Turn and Fishhook maneuvers, the occurrence/non-occurrence of two-wheel lift cannot be used as a measure of vehicle performance for this maneuver because two-wheel lifts during clean run appear unlikely for NCAP vehicles. The rating metric use by NHTSA is the maximum entry speed into the test course at which a driver successfully achieved a ''clean'' run.

We did not perform testing of the Reduced Rollover Resistance configurations of the Phase IV test vehicles with this maneuver; so, we cannot make the comparisons shown in Table 4 for this maneuver. However, the discussion following Table 4 likely applies to this maneuver as well as to the ISO 3888 Part 2 Double Lane Change. Again, this maneuver tests both the handling and rollover resistance of vehicles. In fact, since Consumers Union developed this maneuver to examine the emergency handling of vehicles, and because this maneuver is not as tightly constrained as is the ISO 3888 Part 2 Double Lane Change, we believe that this maneuver focuses more on handling than does the ISO maneuver. Since handling and rollover resistance are inextricably intertwined in the rating produced by this maneuver with handling dominating, the rating generated can easily improve even though the rollover resistance of a vehicle is getting worse.

The above reasoning explains the apparent anomaly in Table 6. In this table, the Chevrolet Blazer has the best ranking of any of the vehicles. However, based on its one star rating and performance in the NHTSA J-Turn and Fishhooks, we believe it to have the lowest rollover resistance of any of the Phase IV rollover test vehicles. The apparent contradiction is resolved once we realize that the Consumers Union Double Lane Change maneuver measures both the handling and rollover resistance of vehicles with handling dominating.

Due to the fact that this maneuver is not focused solely on a vehicle's rollover resistance but instead measures some combination of their handling and rollover resistance properties, its discriminatory capability for rollover resistance (not emergency handling) is poor.

Realistic Appearance

See the ISO 3888 Part 2 Double Lane Change maneuver Realistic Appearance discussion.

I. Open-Loop Pseudo-Double Lane Change

Maneuver Description

Driver-based, path-following double lane changes have historically been associated with considerable handwheel variability. This was in evidence during the ISO 3888 Part 2 and Consumers Union Short Course

testing performed during the Phase IV research. Although the ISO 3888 Part 2 Double Lane Change course layout attempts to minimize this variability by relating lane width to vehicle width, handwheel variability observed during this maneuver continues to exceed that typically observed during steering machine-based maneuvers.

Aside from the handwheel variability issues, double lane changes have a certain appeal. It is foreseeable that the inputs of either double lane change used in Phase IV could emulate a driver's reaction to a variety of crash avoidance scenarios. Furthermore, examination of what effects the third steering input (second reversal) has on dynamic rollover propensity is of interest. To facilitate examination of third steer effects without the confounding effect of handwheel variability, open-loop handwheel inputs executed with the steering machine that approximated a double lane change were performed.

Two open-loop pseudo-double lane changes were performed during the Phase IV research: ISO 3888 Part 2 and Consumers Union Short Course simulations. For each maneuver, handwheel inputs were chosen to approximate those observed during closed-loop, path-following tests performed at VRTC by three test drivers. Specifically, steering recorded during the three tests begun with the highest, yet most similar, entrance speeds was considered for each driver, per maneuver. Using these data, handwheel input composites were developed. Open-loop double lane changes were performed in the Nominal load condition, with the Toyota 4Runner and Chevrolet Blazer only. The Ford Escape and Mercedes ML320 were not evaluated with these maneuvers.

Upon completion of the path-following double lane changes, the three highest, most consistent valid maneuver entrance speeds attained by each driver were determined. A valid test was one in which no vehicle-to-cone contact was detected. This produced a total of nine valid runs for each vehicle (recall the 4Runner with enabled stability control was considered to be separate vehicle from the 4Runner with disabled stability control).

Double lane change simulation began by plotting of the handwheel angles for all drivers of a particular vehicle. The plots were overlaid and centered about the middle peak of the maneuver in the time domain. After each of the nine tests was centered, the data were averaged to form a preliminary composite.

Once the preliminary composite was created, averages for each of the three primary handwheel peaks were calculated. These averages were based on peak value data (independent of time) from each of the nine driver-based tests. Each average was then divided by the appropriate preliminary composite value to produce a ratio. The three ratios were averaged to produce a final, overall ratio. This final ratio was multiplied by preliminary composite data to yield a final handwheel input composite.[17]

Piecewise approximation was used to construct ramp-based handwheel profiles representative of the final handwheel composites. The approximation was programmed into the steering machine, and the maneuver performed.

Figure 16 presents the suite of piecewise approximations used to define the Consumers Union Short Course simulations for the Toyota 4Runner (enabled and disabled stability control) and Chevrolet Blazer.

Generally speaking, closed-loop Consumers Union Short Course tests performed with the 4Runner (disabled stability control) and Blazer contained four significant steering inputs (*i.e.*, third reversals). The drivers used the fourth steering inputs to preserve lateral stability and insure exit lane position. These inputs were included in Consumers Union Short Course approximations for the 4Runner with disabled stability control and for the Blazer, but were not required for approximation of 4Runner steering observed during tests performed with enabled stability control.

Due to the length of the second lane in the ISO 3888 Part 2 course, each driver made steering adjustments after the second handwheel peak to maintain lane position. As a result, each ISO 3888 Part 2 simulation contained five significant handwheel peaks. Figure 17 presents the open-loop steering inputs used to simulate the ISO 3888 Part 2 Double Lane Change maneuver for each vehicle.

During testing, runs of the Open-Loop Pseudo-Double Lane Change were performed beginning with a maneuver entry speed of 35 mph. Vehicle speed was iteratively increased in 5 mph increments to 50 mph or until two-wheel lift occurred. Additionally, tests were performed at the average maximum entrance speed attained by test drivers at VRTC during closed-loop tests without the steering machine. No downward speed iterations were used to isolate the lowest entrance speed capable of producing two-wheel lift.

Objectivity and Repeatability

The Open-Loop Pseudo-Double Lane Change can be performed with excellent objectivity and repeatability. Figure 18 shows the Handwheel Angle, Vehicle Speed, Lateral Acceleration, and Roll Angle as functions of time for two tests of the Chevrolet Blazer that were run at approximately the same speed (40.3 and 40.7 mph). Data from these runs is typical of our experience with this maneuver.

Since this maneuver uses the programmable steering controller, the steering control input is once again precisely replicated from run-to-run. However, the lateral acceleration becomes slightly less repeatable when the vehicle is in the recovery portion (*i.e.*, while trying to straighten out after performing the return lane change).

As was discussed above for the NHTSA J-Turn, for runs near the point at which two-wheel lift first occurs, roll angle repeatability becomes much worse.

Performability

Objective and repeatable Open-Loop Pseudo-Double Lane Change maneuvers can easily be performed using a programmable steering controller.

While running this maneuver is straightforward, we have substantial concerns about the maneuver itself. Unfortunately, due to lack of development time, we doubt that the steering inputs used during the Phase IV Rollover Research correspond to worst case conditions. Work is needed as to how to adapt this maneuver for different vehicles sizes or characteristics. Probably at least one year of effort would be required to develop and refine this maneuver.

Discriminatory Capability

Testing for the Open-Loop Pseudo-Double Lane Change maneuver was only performed using two vehicles, the 2001 Chevrolet Blazer and the 2001 Toyota 4Runner (both with the yaw stability control enabled and disabled). Two different steering inputs were used for this Open-Loop Pseudo-Double Lane Change testing, one that simulated the ISO 3888 Part 2 Double Lane Change and one that simulated the Consumers Union Short Course Double Lane Change.

For the simulated ISO 3888 Part 2 Double Lane Change, the Chevrolet Blazer had two-wheel lift while the Toyota 4Runner with yaw stability control enabled and disabled did not. However, the maneuver entry speed at which the Chevrolet Blazer had two-wheel lift was substantially (5 mph) higher than the maximum speed at which Toyota 4Runner testing was stopped. When yaw stability control was disabled, the speed at which Toyota 4Runner testing was stopped was determined by when spin-out occurred. When yaw stability control was enabled, the speed at which Toyota 4Runner testing was stopped was determined by test driver concerns about possible loss of control. So two-wheel lift was seen for the Chevrolet Blazer but not the Toyota 4Runner because the Blazer was able to perform this maneuver at higher speeds than was the 4Runner. As was the case for the actual ISO 3888 Part 2 Double Lane Change, handling and rollover resistance appear to be inextricably intertwined in the ratings produced by this maneuver.

For the simulated Consumers Union Short Course Double Lane Change, the Chevrolet Blazer and the Toyota 4Runner with yaw stability control disabled had two-wheel lift while the Toyota 4Runner with yaw stability control enabled did not. The maneuver entry speed at which the Chevrolet Blazer had two-wheel lift was higher than the maximum speed at which Toyota 4Runner two-wheel lift occurred. However, based on its one star rating and performance in the NHTSA J-Turn and Fishhooks, we believe the Chevrolet Blazer to have the lowest rollover resistance of any of the Phase IV rollover test vehicles. The explanation for this apparent anomaly is that, as was the case for the actual Consumers Union Short Course Double Lane Change, handling and rollover resistance appear to be inextricably intertwined in the ratings produced by this maneuver.

Because this maneuver is not focused solely on a vehicle's rollover resistance but

[17] Determination of the final composite was necessary because the peak handwheel input of a particular test did not necessarily occur at the same time as the others. The preliminary composite was used to establish trends (*e.g.*, timing, rates, *etc.*) in the handwheel position data. The final composite increased handwheel magnitudes, so as to insure maneuver severity was preserved.

instead measures some combination of handling and rollover resistance properties, its discriminatory capability for rollover resistance is poor.

Realistic Appearance

The Realistic Appearance discussion from the Ford Path Corrected Limit Lane Change again applies.

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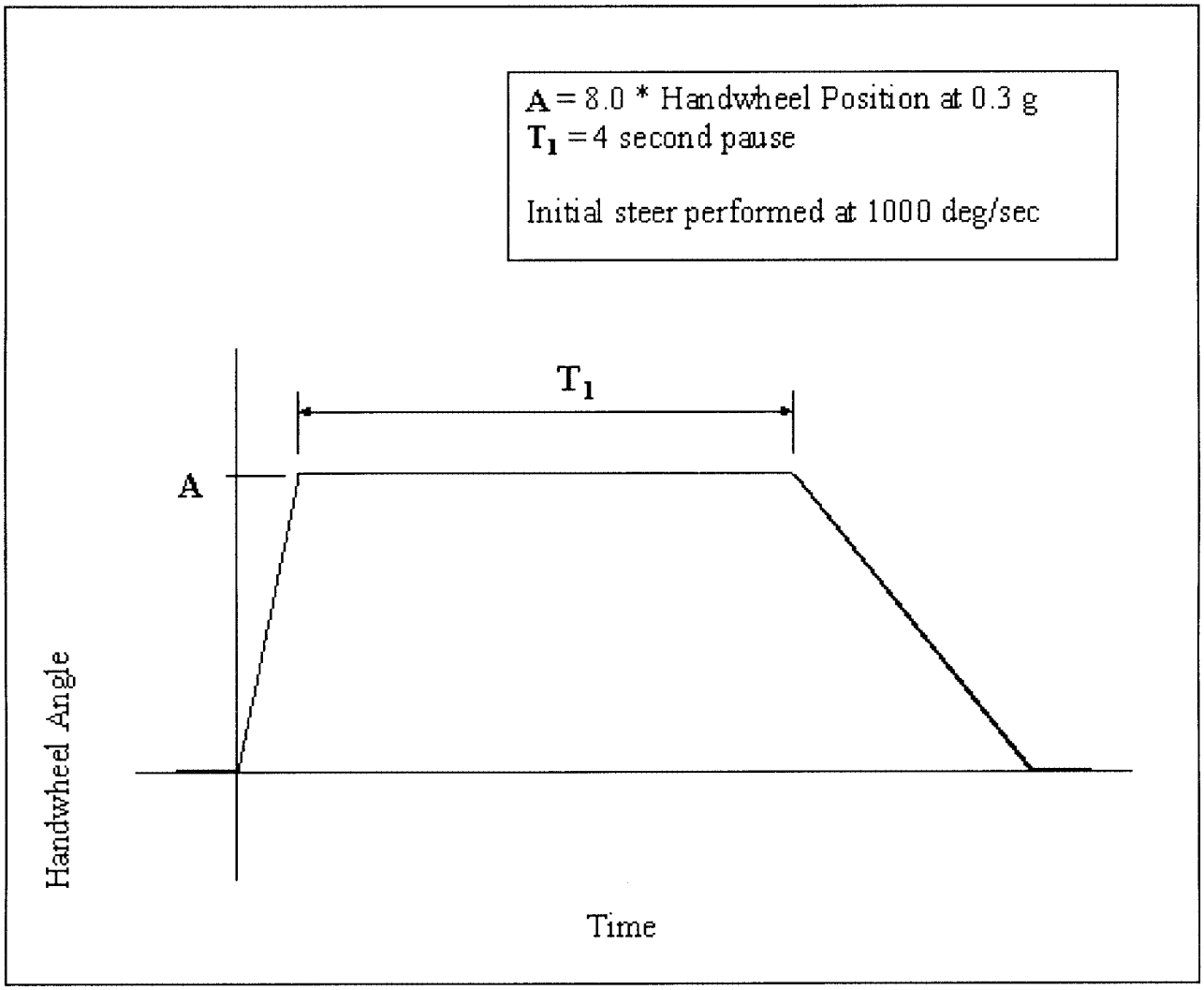

Figure 1: J-Turn maneuver description.

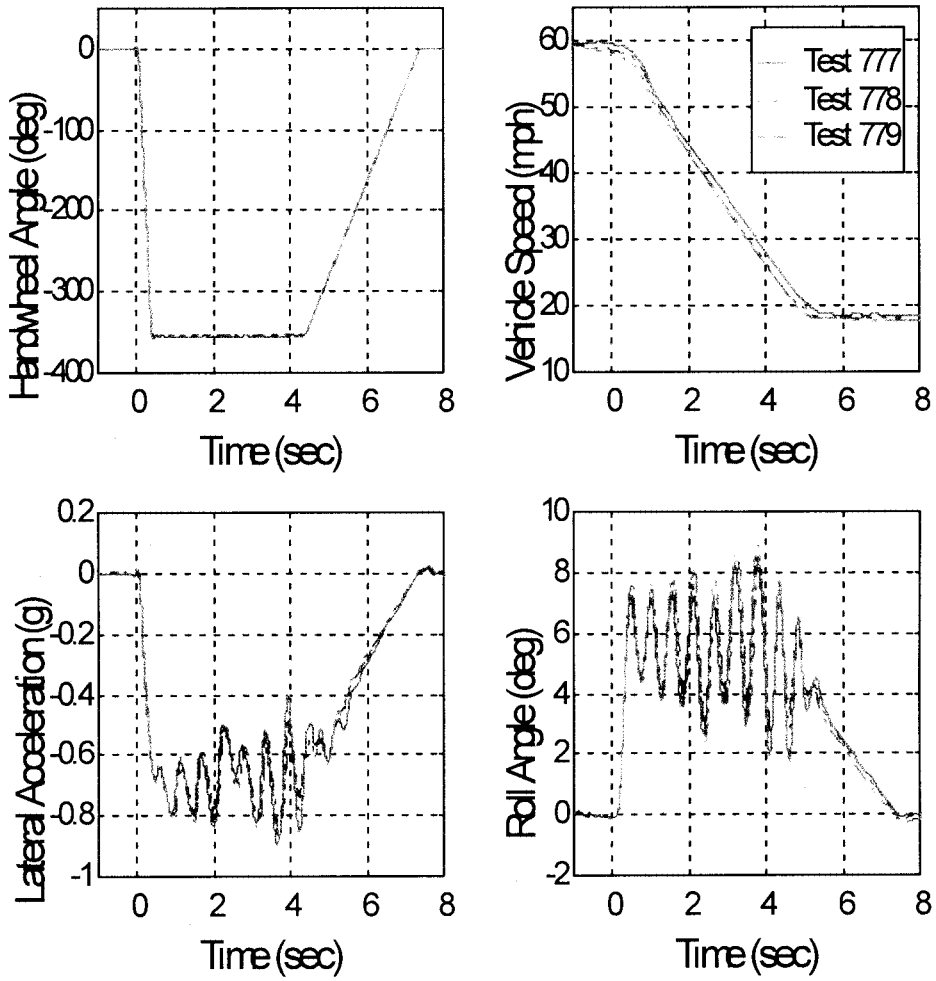

Figure 2: NHTSA J-Turn test inputs and outputs for three tests performed with the Toyota 4Runner with yaw stability control disabled

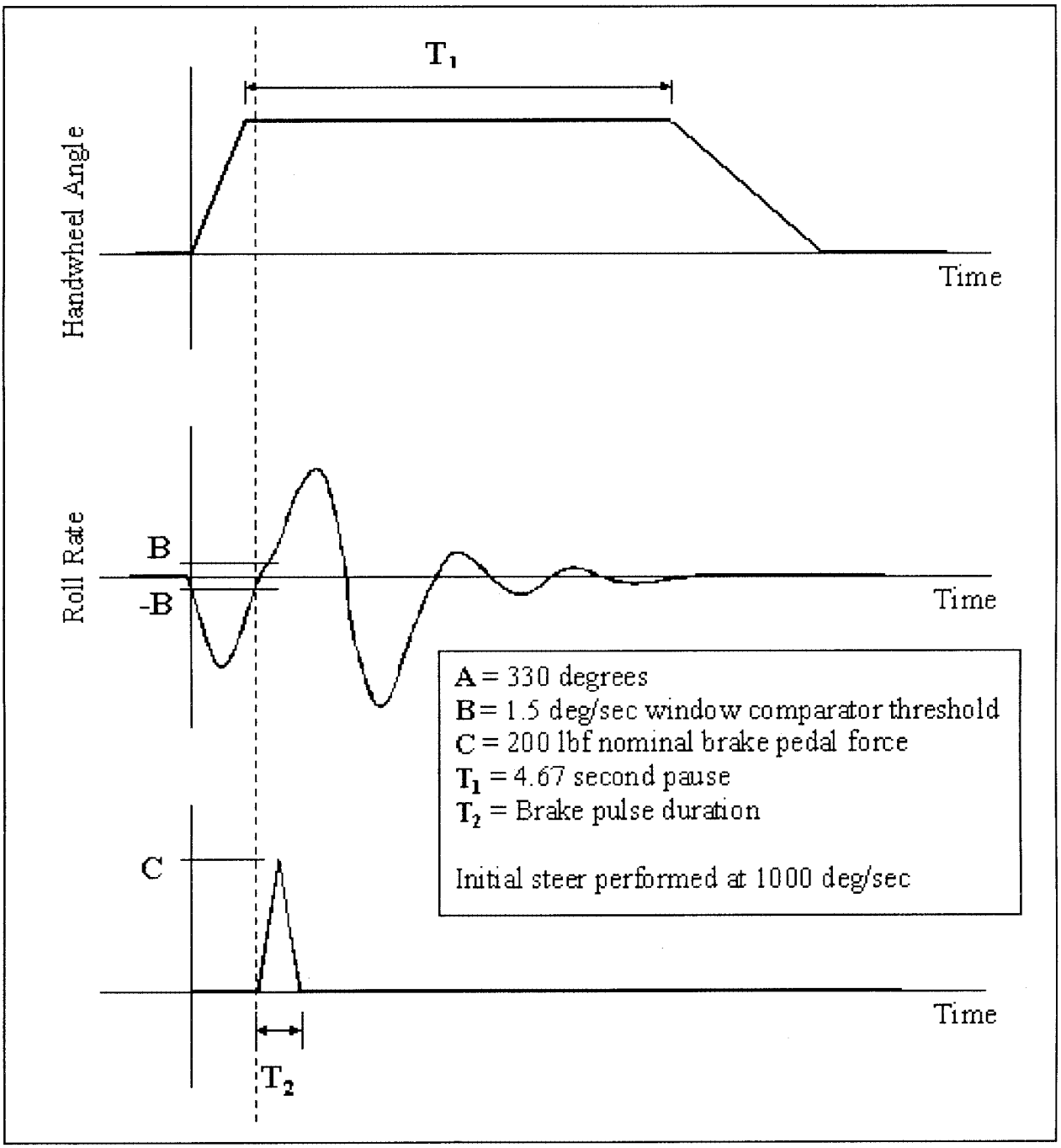

Figure 3: J-Turn with Pulse Braking Handwheel Steering Angle and Brake Pedal Force

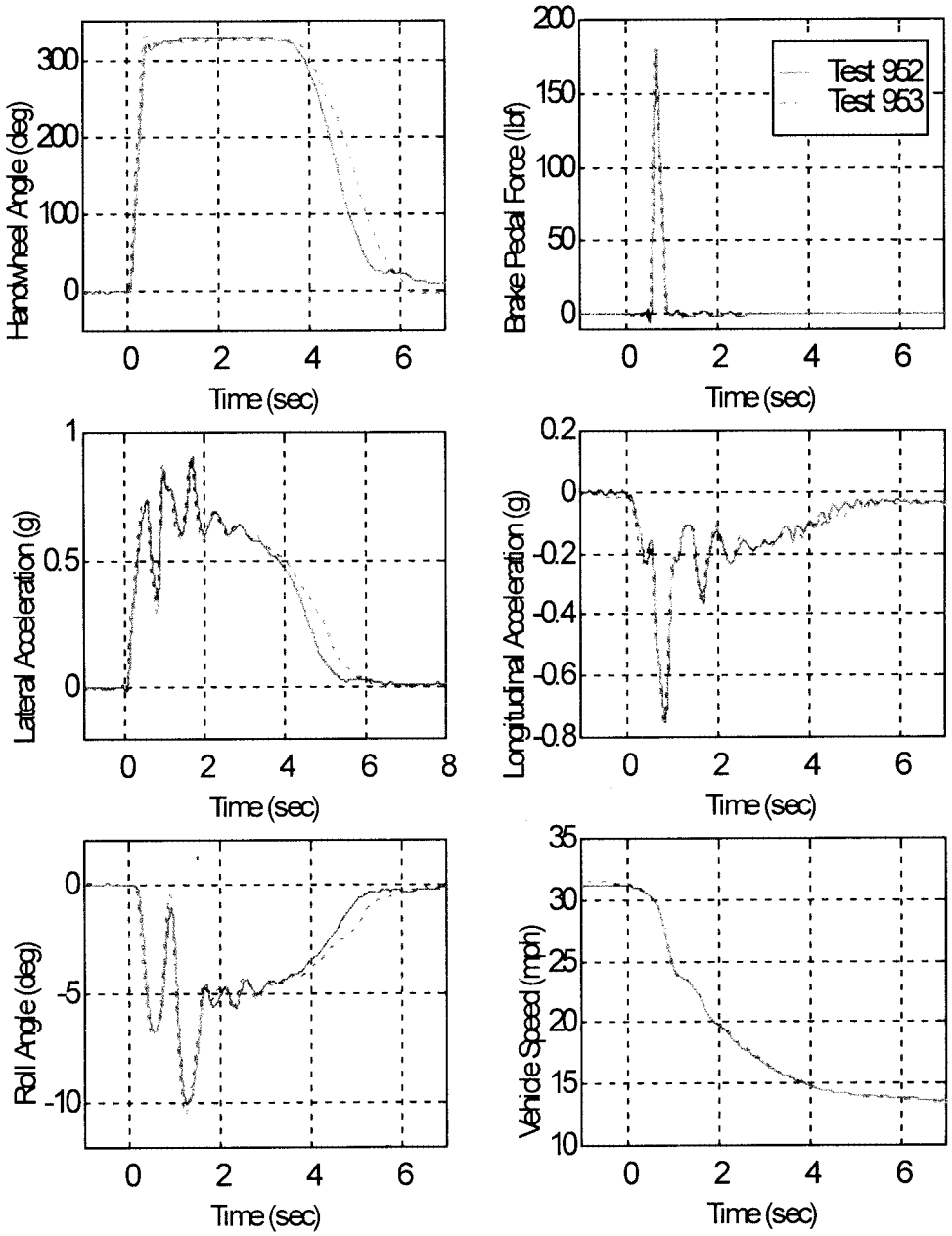

Figure 4: J-Turn with Pulse Braking test inputs and outputs for two tests performed with the Chevrolet Tracker during Phase III-B of Rollover Research

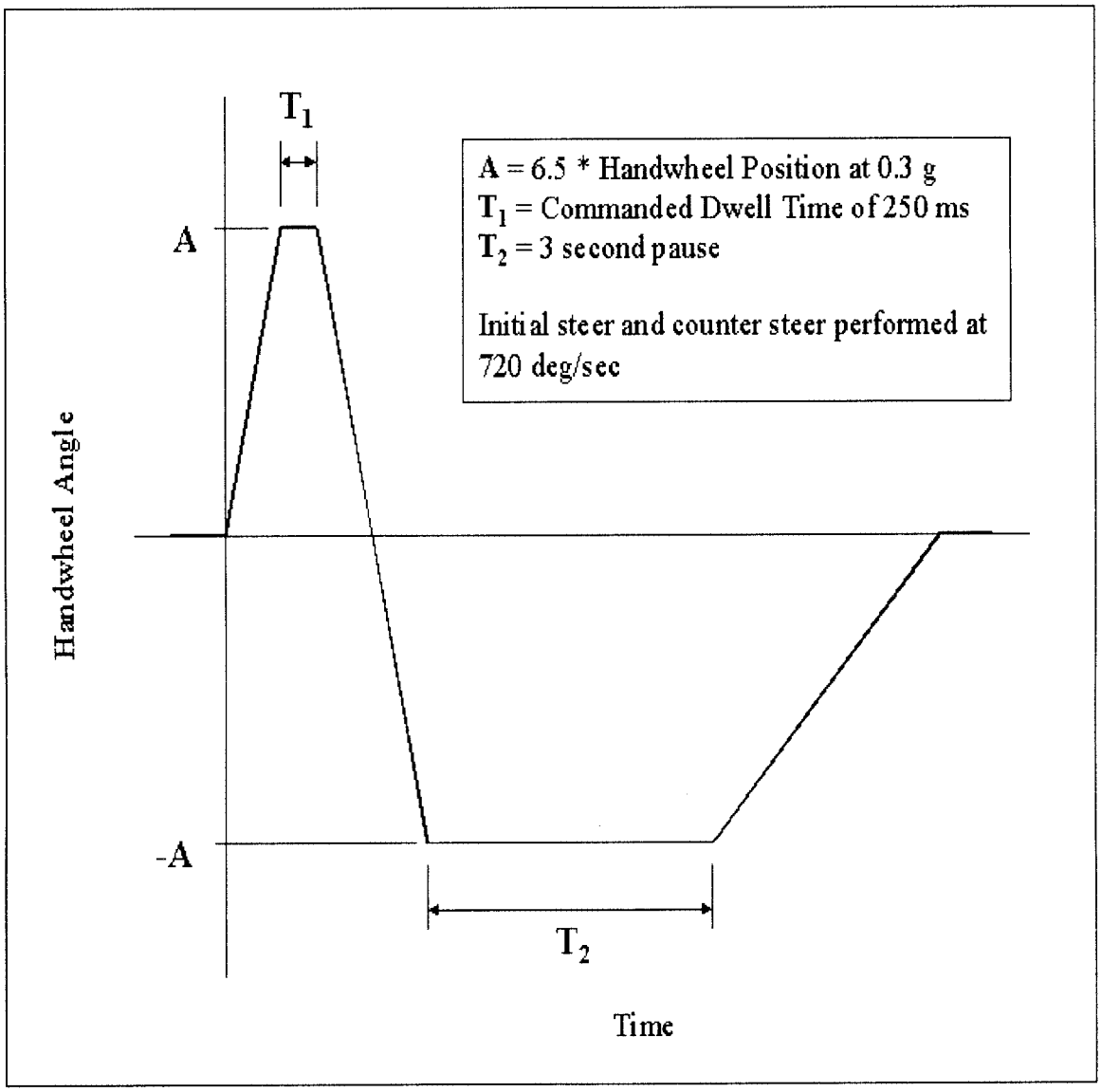

Figure 5: Fixed Timing Fishhook maneuver description

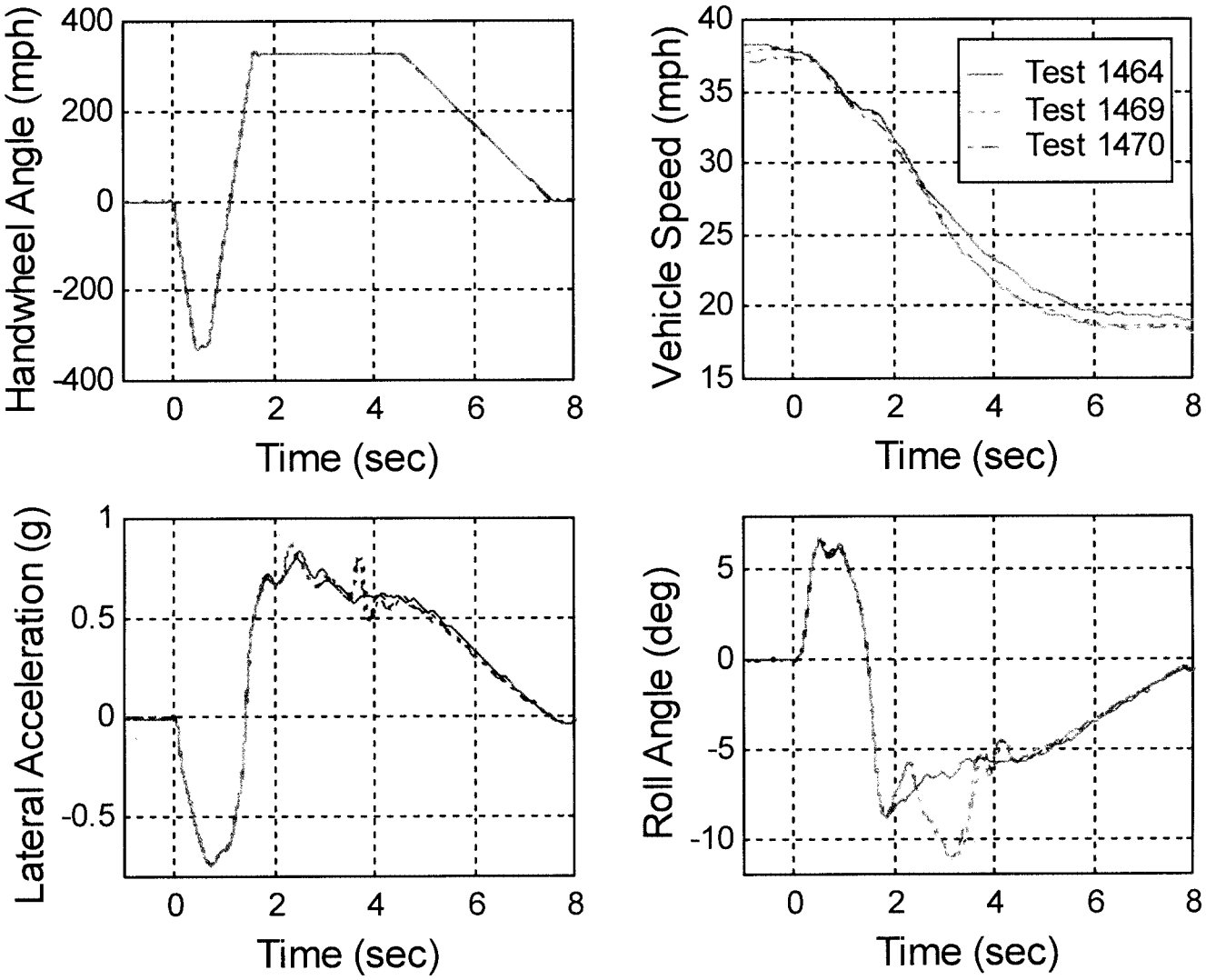

Figure 6: Fixed Timing Fishhook test inputs and outputs for three tests performed with the Chevrolet Blazer

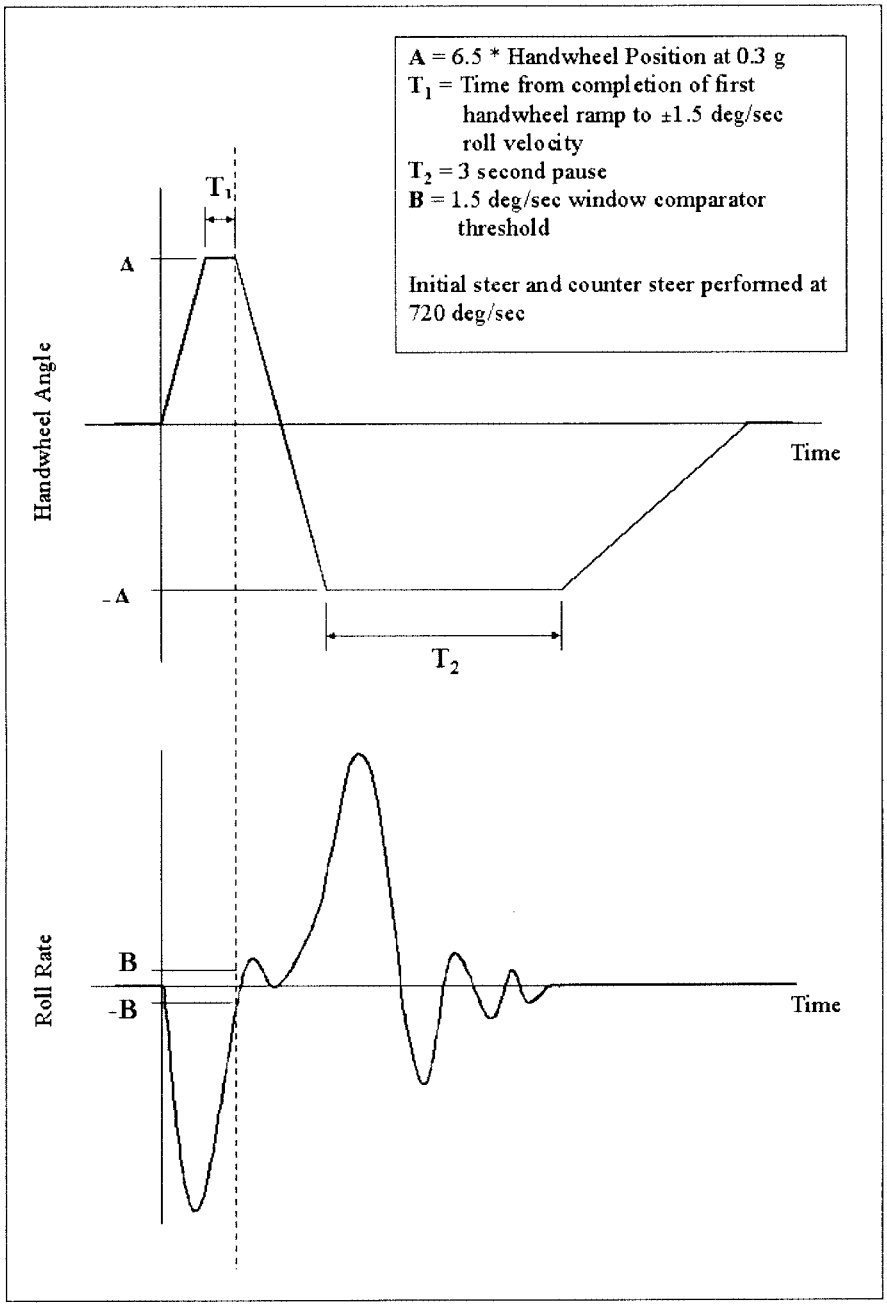

Figure 7: Roll Rate Fishhook maneuver description

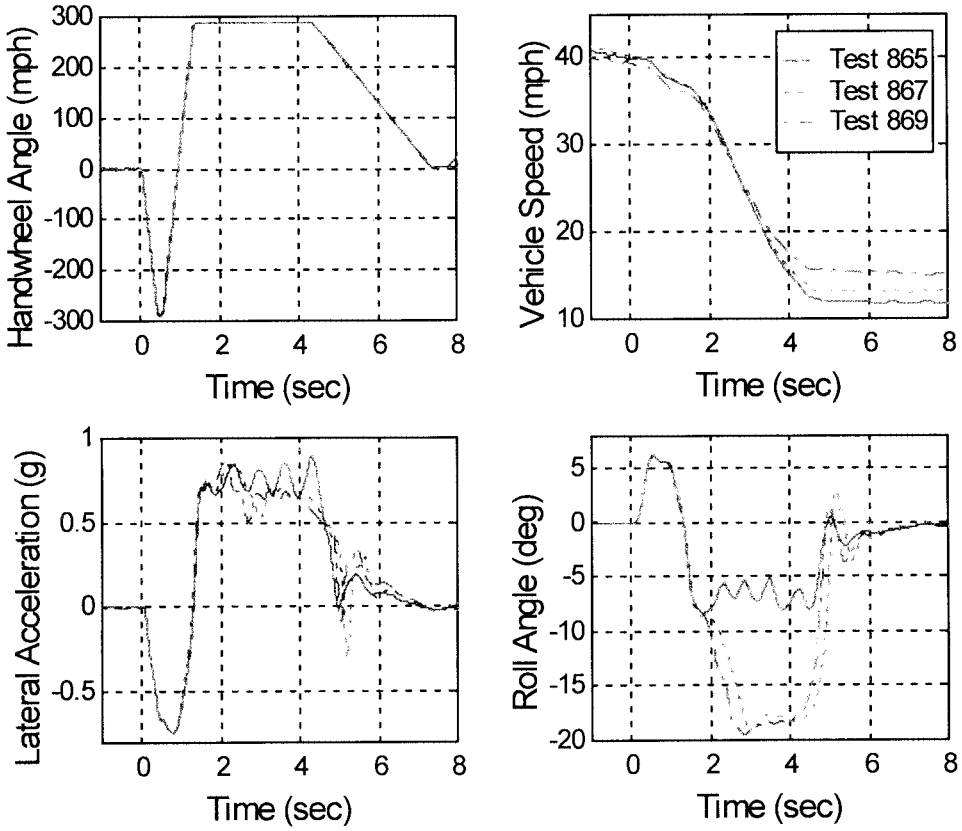

Figure 8: Roll Rate Feedback Fishhook test inputs and outputs for three tests performed with the Toyota 4Runner with yaw stability control disabled

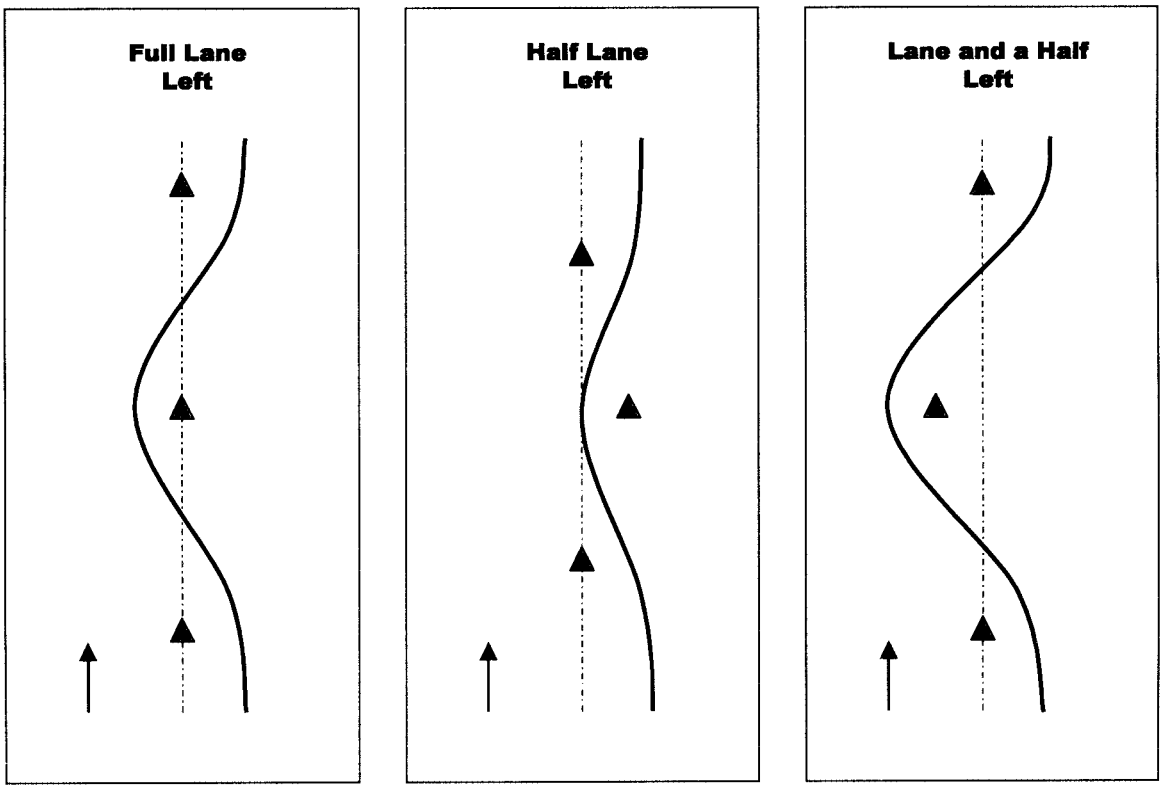

Figure 9: Ford Path Specific Double Lane Change Course

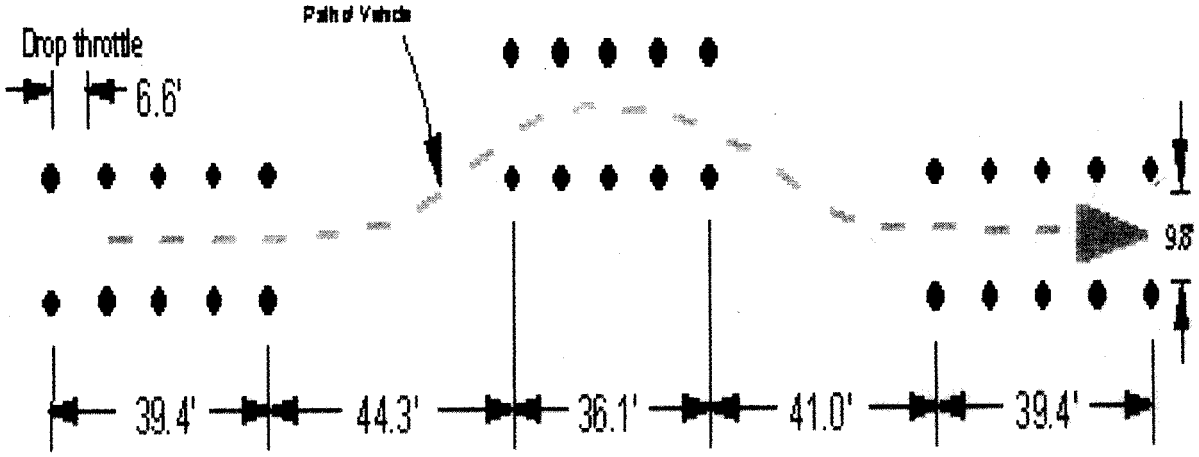

Figure 10: The ISO 3888 Part 2 Double Lane Change Course

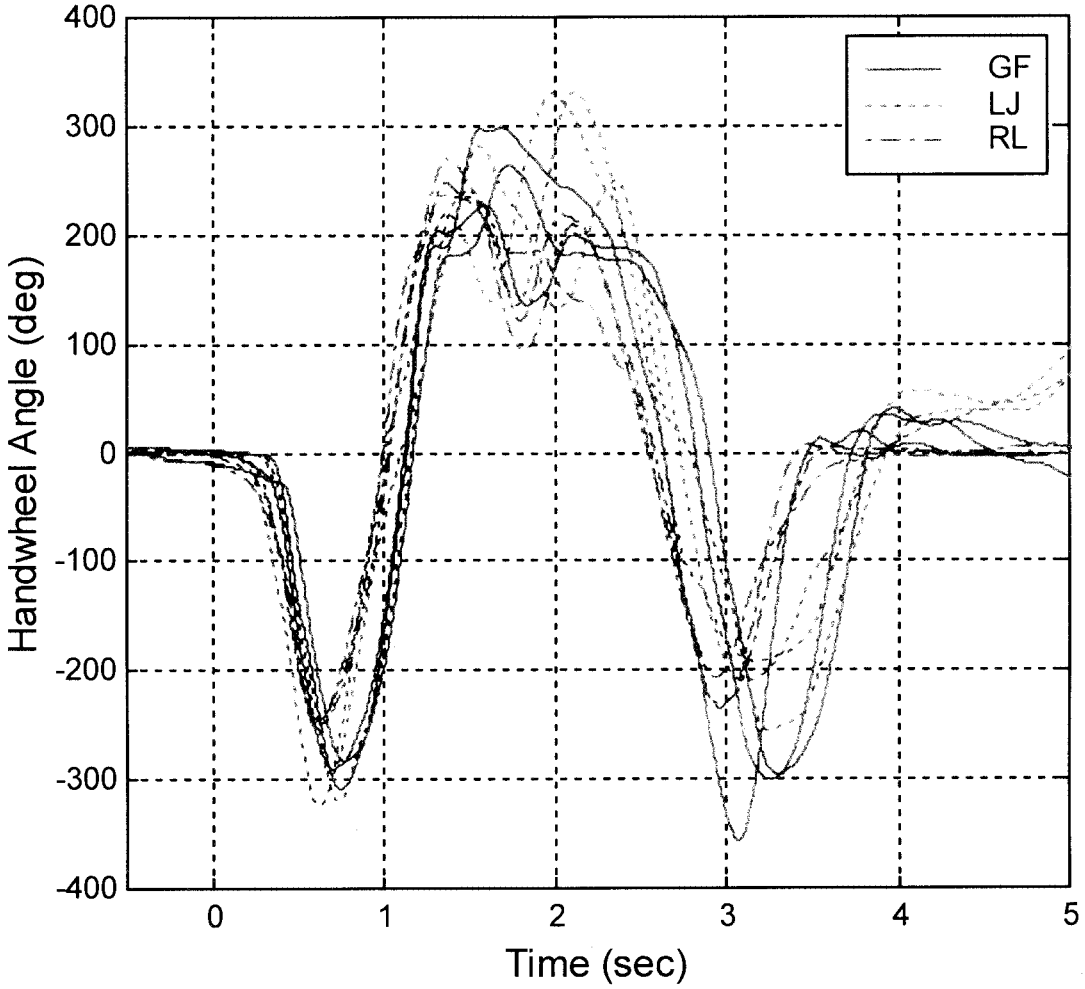

Figure 11: Handwheel input repeatability observed during ISO 3888 Part 2 Double Lane Change testing performed with the Chevrolet Blazer

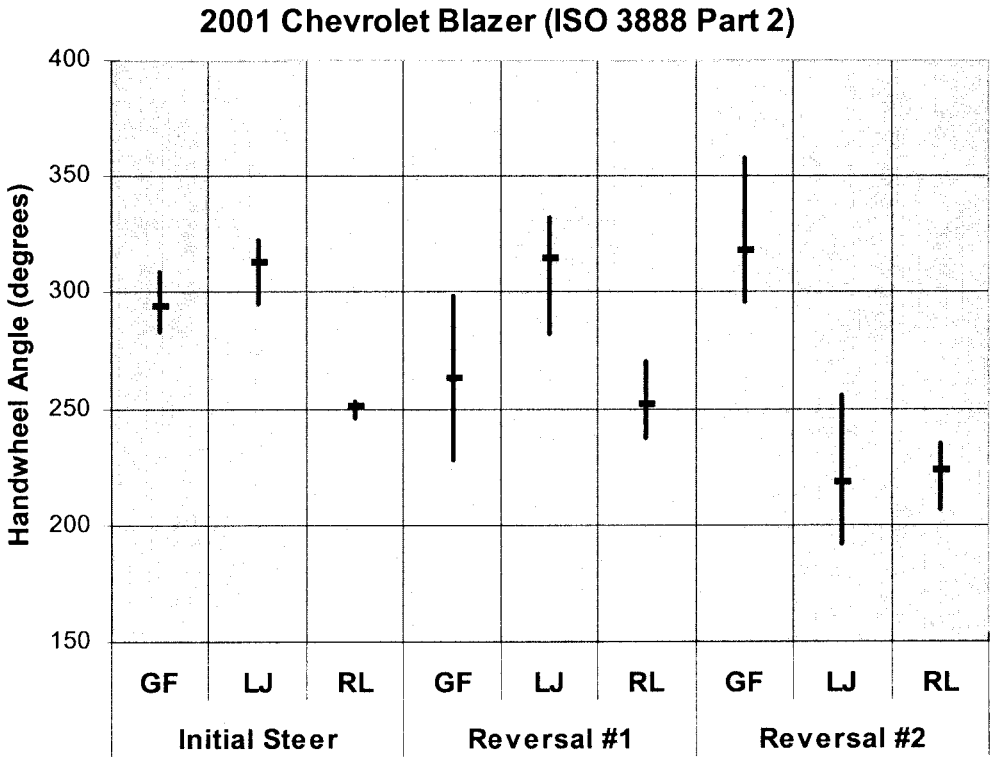

Figure 12: Handwheel input repeatability observed during ISO 3888 Part 2 Double Lane Change testing performed with the Chevrolet Blazer

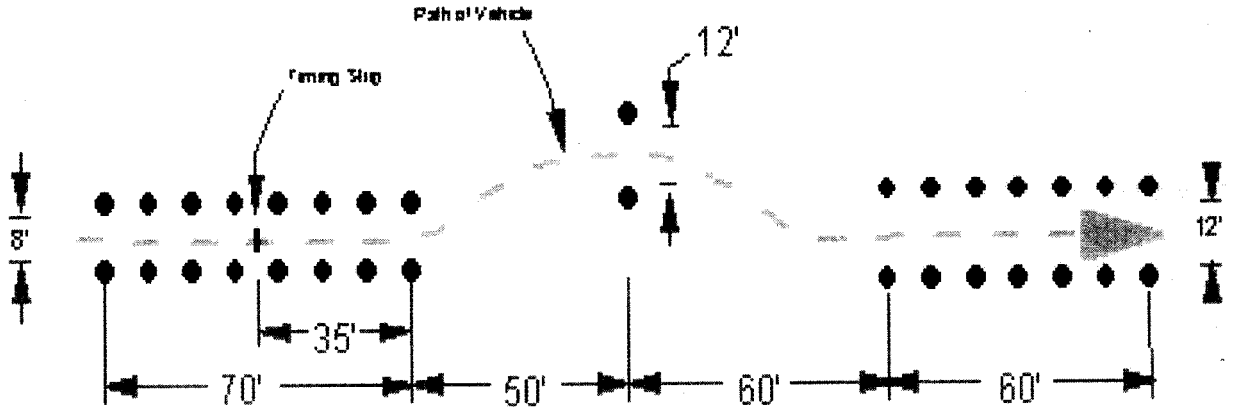

Figure 13: The Consumers Union Short Course Double Lane Change

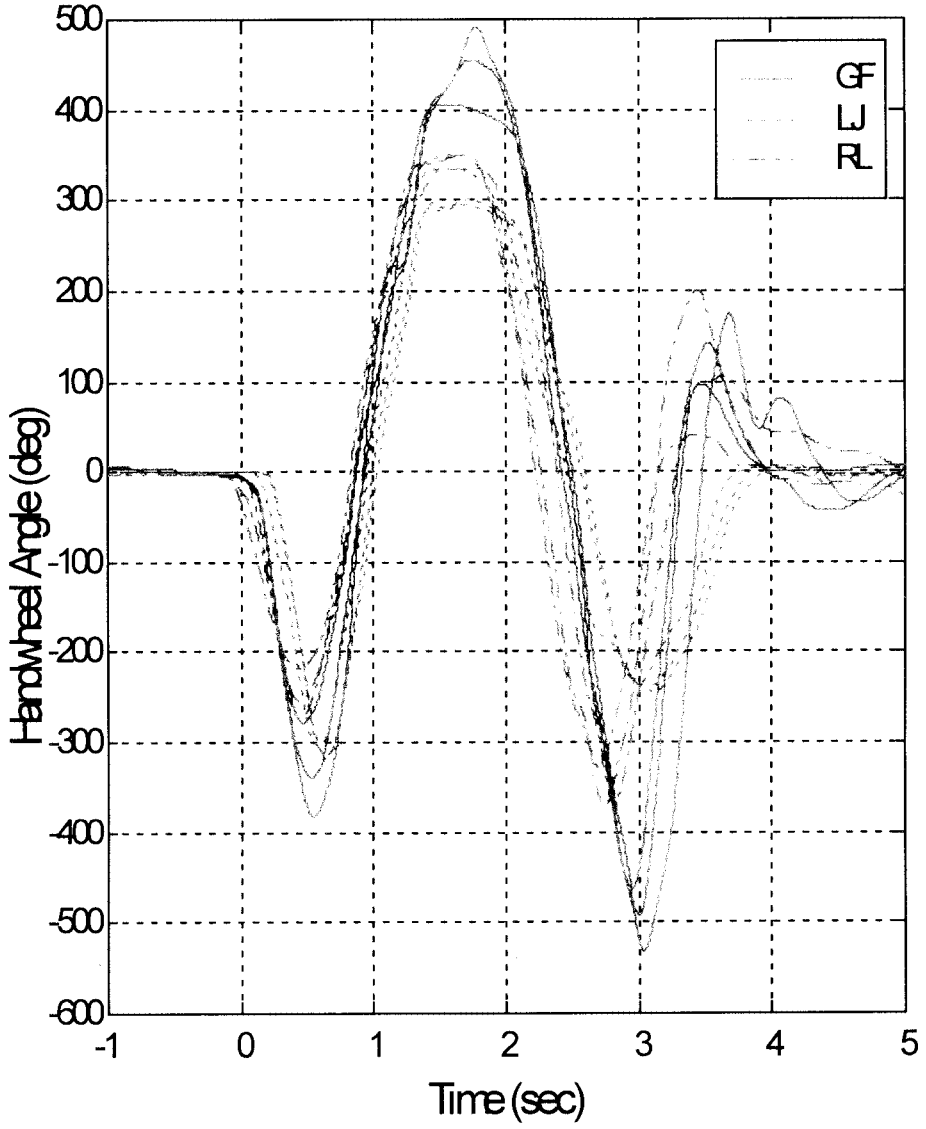

Figure 14: Handwheel input repeatability observed during Consumers Union Short Course testing performed with the Chevrolet Blazer.

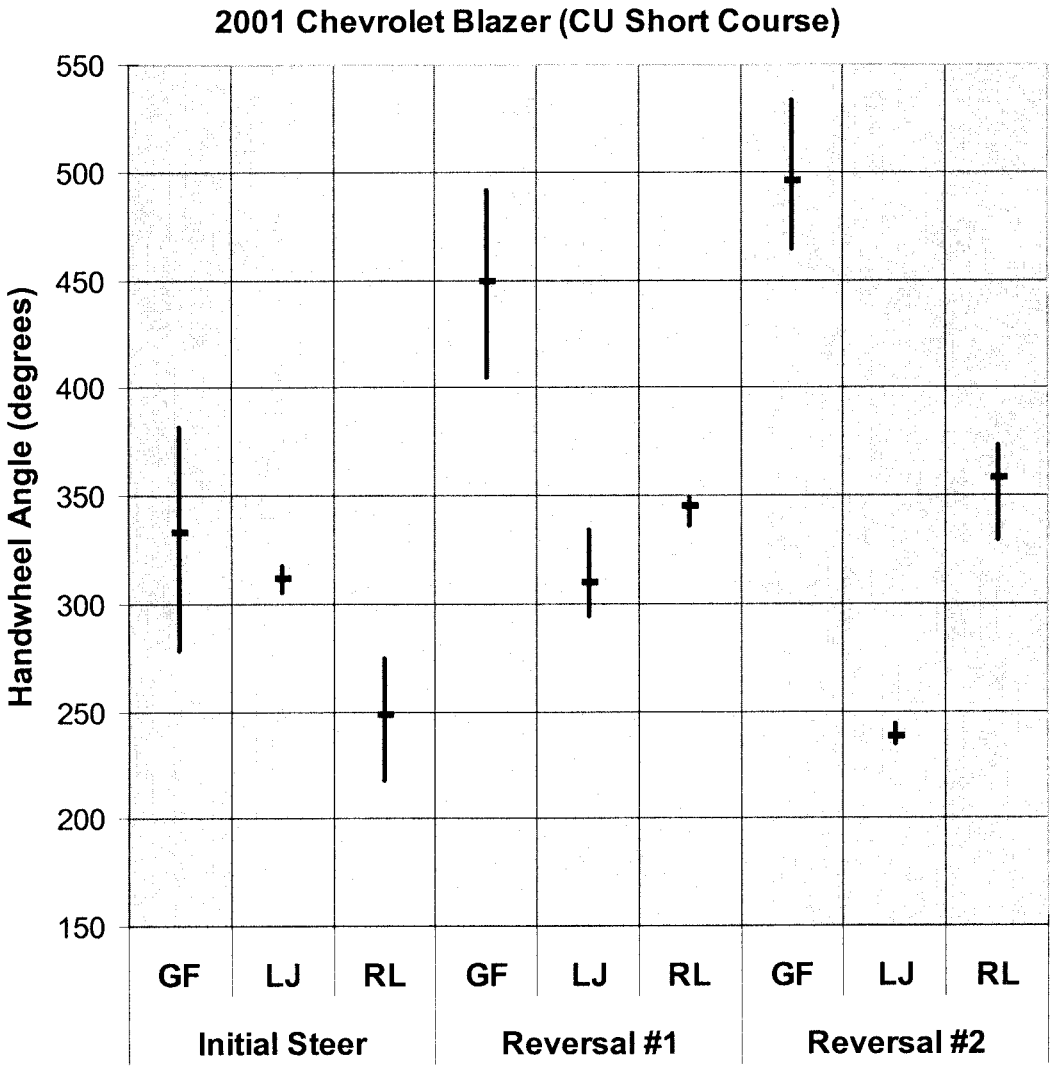

Figure 15: Handwheel input repeatability observed during Consumers Union Short Course Double Lane Change testing performed with the Chevrolet Blazer

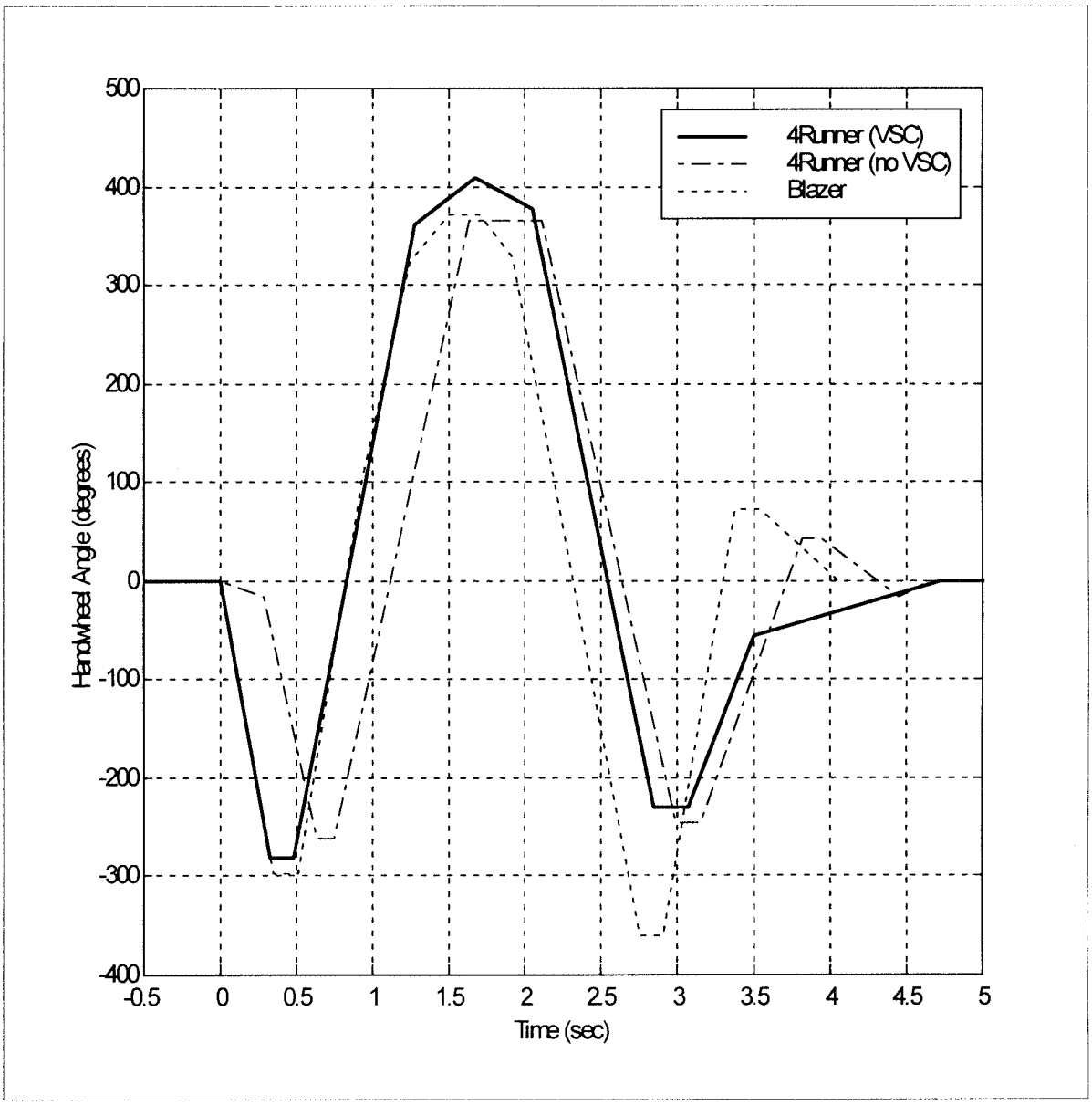

Figure 16: Consumers Union Short Course Pseudo-Double Lane Change Steering Inputs

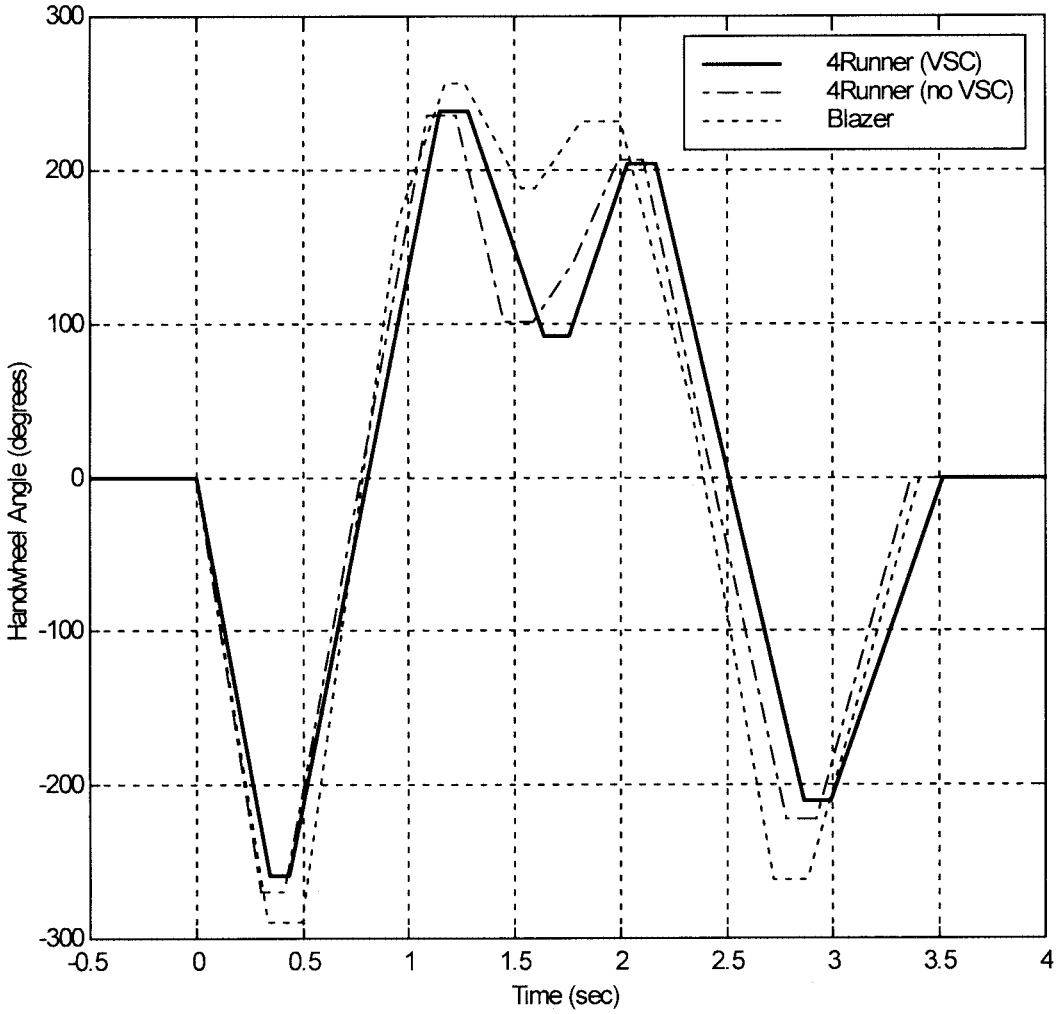

Figure 17: ISO 3888 Part 2 Pseudo-Double Lane Change Steering Inputs

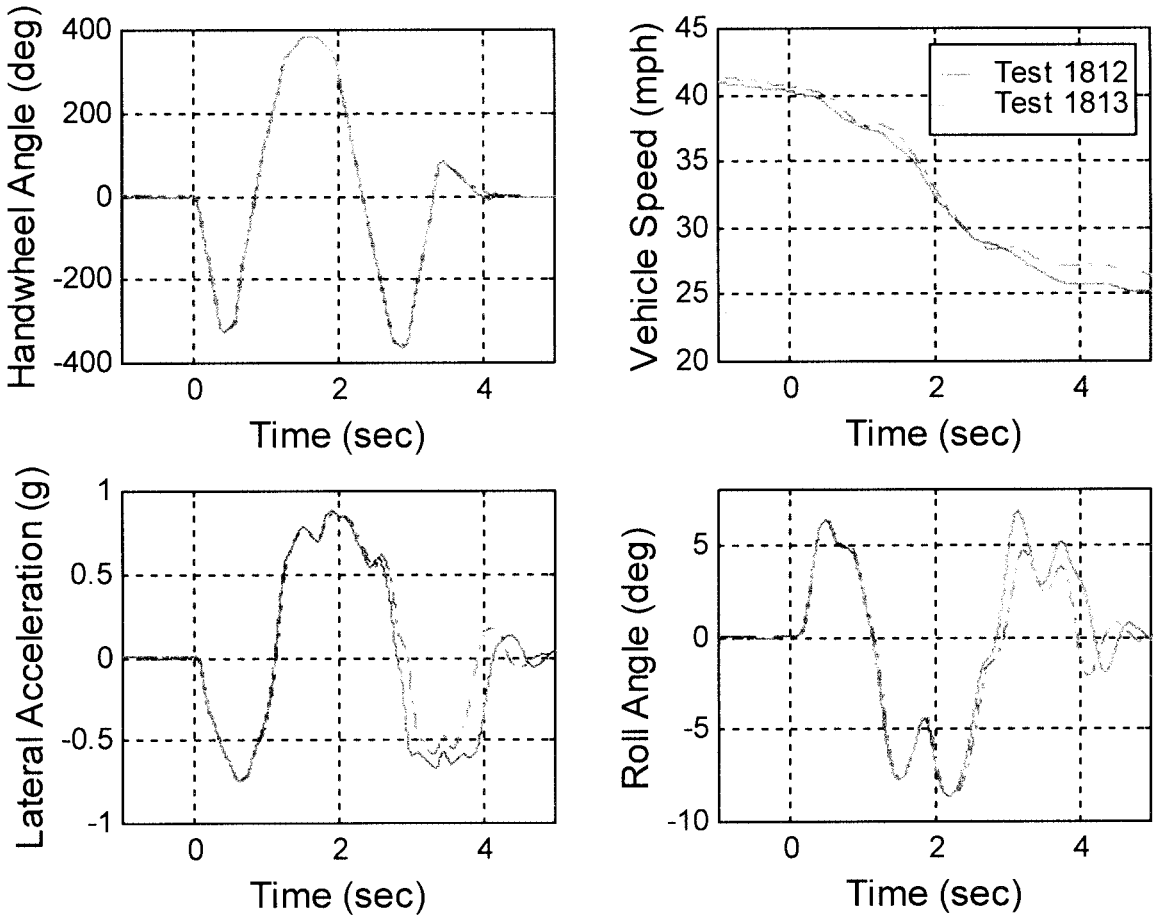

Figure 18: Open-Loop Pseudo-Double Lane Change test inputs and outputs for two tests performed with the Chevrolet Blazer

[FR Doc. 02–25115 Filed 10–1–02; 8:45 am]
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Federal Register

Monday,
October 7, 2002

Part III

Department of Defense

48 CFR Parts 206, et al.

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition; Proposed Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 206, 208, 209, 225, 242, and 252

[DFARS Case 2002–D009]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to simplify and clarify policy pertaining to the acquisition of supplies and services from foreign sources.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 6, 2002, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002–D009 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D009.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes revisions to DFARS Part 225, Foreign Acquisition, and associated provisions and clauses. The rule—

- Provides streamlined procedures for evaluating foreign offers when acquiring supplies, and adds procedures for evaluating foreign offers in acquisitions in which price is not the determining factor.
- Changes the definition of ''qualifying country end product'' to permit the qualifying country manufacturing the product to use components from any other qualifying country.
- Lowers the required approval levels for determinations of nonavailability under the Buy American Act.
- Lowers the required approval levels for individual public interest determinations for acquisition of end products from qualifying countries.
- Provides that the Government will evaluate duty only if it is to be paid. Except for qualifying country supplies or eligible end products, the contractor will request duty-free entry only on foreign supplies for which the contractor estimates that duty will exceed $200 per unit (end product or component). One duty-free entry clause replaces five existing clauses.
- Makes use of the clause pertaining to Waiver of United Kingdom Levies optional for acquisitions not expected to exceed the simplified acquisition threshold.
- Eliminates the requirement for a contractor to represent that it will comply with all laws, decrees, labor standards, and regulations of the foreign country in which the contract will be performed.
- Moves restrictions on contracting with firms owned or controlled by the government of a terrorist country or other foreign governments from Part 209, Contractor Responsibility, to Part 225, Foreign Acquisition.
- Deletes obsolete text and clauses relating to outdated appropriations act restrictions, resulting in the elimination of four clauses.
- Incorporates the DFARS changes proposed under Case 2002–D008, Trade Agreements Act-Exception for U.S.-Made End Products, published at 67 FR 49278 on July 30, 2002.

Because of the complexity of the Buy American Act and the trade agreements, DoD is preparing an on-line training module to assist in understanding DFARS Part 225. The goal is to provide sufficient explanatory material and practical examples to clarify the main issues.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most of the changes in the rule merely simplify and clarify existing policy and procedures. Other changes, such as the revised definition of ''qualifying country end product'' primarily affect foreign firms, which, by definition, do not qualify as small entities within the meaning of the Regulatory Flexibility Act. The changes in procedures for evaluation of duty will result in a paperwork burden reduction for both large and small businesses, but the economic impact will not be significant. Therefore, DoD has not prepared an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D009.

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The information collection requirements in the rule are currently approved by the Office of Management and Budget under Control Numbers 0704–0229 and 0704–0187. Elimination of the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, will result in a reduction of 21,451 hours in estimated annual burden.

List of Subjects in 48 CFR Parts 206, 208, 209, 225, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 206, 208, 209, 225, 242, and 252 as follows:

1. The authority citation for 48 CFR Parts 206, 208, 209, 225, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.303–1 is amended by adding paragraph (d) to read as follows:

206.303–1 Requirements.

* * * * *

(d) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), is the agency point of contact for submission of justifications to the Office of the United States Trade Representative.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.7203 [Amended]

3. Section 208.7203 is amended in paragraph (c) by removing ''225.7010'' and adding in its place ''225.7005''.

PART 209—CONTRACTOR QUALIFICATIONS

209.101 [Removed]

4. Section 209.101 is removed.

5. Section 209.104–1 is amended by revising paragraph (g) to read as follows:

209.104–1 General standards.

* * * * *

(g) For restrictions on contract award to certain foreign firms, see subparts 225.7 and 225.70.

209.104–70 [Removed]

6. Section 209.104–70 is removed.

209.405–2 [Removed]

7. Section 209.405–2 is removed.

209.409 [Removed]

8. Section 209.409 is removed.

PART 225—FOREIGN ACQUISITION

9. Sections 225.000, 225.001, and 225.003 are revised to read as follows:

225.000 Scope of part.

This part also provides policy and procedures for—

(1) Purchasing foreign defense supplies, services, and construction materials, including special procedures for—

(i) Contracting with Canadian and other qualifying country sources; and

(ii) Cooperative projects;

(2) Implementing statutory and policy restrictions on foreign acquisition;

(3) Reporting contract performance outside the United States;

(4) Foreign military sales acquisitions; and

(5) Antiterrorism/force protection for defense contractors outside the United States.

225.001 General.

When evaluating offers of foreign end products, consider the following:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Statute (see subpart 225.70); or

(B) DoD policy (see subpart 225.71 and FAR 6.302–3).

(ii) If an exception to or waiver of a restriction in subpart 225.70 or 225.71 would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

(2) *Memoranda of understanding or other international agreements.* Determine whether the offered product is the product of one of the qualifying countries listed in 225.872–1.

(3) *Trade agreements.* If the product is not an eligible product, a qualifying country end product, or a U.S.-made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c)).

(4) *Other trade sanctions and prohibited sources.*

(i) Determine whether the offeror complies with the secondary Arab boycott of Israel. Award to such offerors may be prohibited (see 225.670).

(ii) Determine whether the offeror is a prohibited source (see 225.770).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in Subpart 225.5.

225.003 Definitions.

As used in this part—

(1) *Caribbean Basin country end product* includes petroleum or any product derived from petroleum.

(2) *Defense equipment* means any equipment, item of supply, component, or end product purchased by DoD.

(3) *Domestic concern* means—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern); or

(ii) An unincorporated concern having its principal place of business in the United States.

(4) *Domestic end product* has the meaning given in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) *Eligible product* means, instead of the definition in FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401–70.

(6) *Foreign concern* means any concern other than a domestic concern.

(7) *Government of a terrorist country* is defined in the provision at 252.225–7017, Disclosure of Ownership or Control by the Government of a Terrorist Country.

(8) *Nonqualifying country* means a country other than the United States or a qualifying country.

(9) *Nonqualifying country component* means a component mined, produced, or manufactured in a nonqualifying country.

(10) *Qualifying country* means a country with a memorandum of understanding or international agreement with the United States. Qualifying countries are listed in 225.872–1.

(11) *Qualifying country component* and *qualifying country end product* are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. *Qualifying country end product* is also defined in the clause at 252.225–7021, Trade Agreements.

(12) *Qualifying country offer* means an offer of a qualifying country end product, including the price of transportation to destination.

(13) *Source,* when restricted by such words as foreign, domestic, or qualifying country, means the actual manufacturer or producer of the end product or component.

(14) *Terrorist country* is defined in the provision at 252.225–7017, Disclosure of Ownership or Control by the Government of a Terrorist Country.

10. Subpart 225.1 is revised to read as follows:

Subpart 225.1—Buy American Act—Supplies

Sec.
225.101 General.
225.103 Exceptions.
225.104 Nonavailable articles.
225.105 Determining reasonableness of cost.
225.170 Solicitations.

225.101 General.

(a) For DoD, the following two-part test determines whether a manufactured end product is a domestic end product:

(i) The end product is manufactured in the United States; and

(ii) The cost of its U.S. and qualifying country components exceeds 50 percent of the cost of all its components. This test is applied to end products only and not to individual components.

(c) Additional exceptions that allow the purchase of foreign end products are listed at 225.103.

225.103 Exceptions.

(a)(i)(A) Public interest exceptions for certain countries are in 225.872.

(B) For procurements subject to the Trade Agreements Act, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that it is inconsistent with the public interest to apply the Buy American Act to end products that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in Subpart 225.5, but

consider recommending a public interest exception if the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(*1*) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(*2*) To ensure access to advanced state-of-the-art commercial technology; or

(*3*) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(*i*) For an end item that qualifies as a domestic end product; or

(*ii*) In order not to impair integration of the military and commercial industrial base.

(B) Except as provided in 225.872–4(b), process a determination for a public interest exception after consideration of the factors in 10 U.S.C. 2533—

(*1*) At a level above the contracting officer for acquisitions valued at $100,000 or less;

(*2*) By the head of the contracting activity for acquisitions valued at more than $100,000 but less than $1,000,000; or

(*3*) By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required when domestic offers are insufficient to meet the requirement and award is to be made on other than a qualifying country or eligible end product.

(ii) Except as provided in FAR 25.103(b)(3), the determination shall be approved—

(A) At a level above the contracting officer, if the acquisition is valued at $100,000 or less;

(B) By the chief of the contracting office if the acquisition is valued at more than $100,000 but less than $1,000,000; or

(C) By the head of the contracting activity or immediate deputy if the acquisition is valued at $1,000,000 or more.

(iii) DoD has determined that the following articles are not reasonably available from domestic sources:

(A) End products or components listed in 225.104(a).

(B) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(C) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under subpart 225.5.

225.104 Nonavailable articles.

(a) DoD has determined that the following articles also are nonavailable in accordance with FAR 25.103(b):

(i) Aluminum clad steel wire.

(ii) Sperm oil.

225.105 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.105(b).

225.170 Solicitations.

For oral solicitations, inform prospective quoters that only domestic and qualifying country end products are acceptable unless—

(1) Other foreign end products are excepted either on a blanket or an individual basis; or

(2) The price of another foreign end product is the low offer under the evaluation procedures in Subpart 225.5.

225.202 [Amended]

11. Section 225.202 is amended in paragraph (a)(2) as follows:

a. In the first sentence, by removing the parenthetical ''(iii)''; and

b. In the second sentence, by removing ''must'' and adding in its place ''shall''.

12. Section 225.401 is revised to read as follows:

225.401 Exceptions.

(a)(2) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR Subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (OUSD (AT&L) DP). Approval by OUSD (AT&L) DP is not required if—

(A) Purchase from foreign sources is restricted by statute (see Subpart 225.70);

(B) Another exception in FAR 25.401 applies to the acquisition; or

(C) Competition from foreign sources is restricted under Subpart 225.71.

13. Section 225.401–70 is amended in the introductory text by revising the last sentence to read as follows:

225.401–70 Products subject to trade agreement acts.

* * * The following list indicates those products that are eligible for designated and NAFTA countries, but are not eligible for Caribbean Basin countries.

* * * * *

14. Sections 225.402 and 225.403 are revised to read as follows:

225.402 General.

To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401–70).

225.403 Trade Agreements Act.

(c) For acquisitions subject to the Trade Agreements Act, acquire only U.S.-made, qualifying country, or eligible end products unless—

(i) The contracting officer determines that offers of U.S.-made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements. In this case, accept all responsive, responsible offers of U.S.-made, qualifying country, and eligible products before accepting any other offers; or

(ii) A national interest waiver under 19 U.S.C. 2512(b)(2) is granted on a case-by-case basis. Except as delegated in paragraphs (c)(i)(A) and (B) of this section, submit any request for a national interest waiver to the Director of Defense Procurement in accordance with department or agency procedures. Include supporting rationale with the request.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity, if the waiver is supported by a written statement from the requiring activity that the products being acquired are critical for the support of U.S. forces stationed abroad.

(B) The Commander or Director, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

15. Subpart 225.5 is revised to read as follows:

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

Sec.
225.502 Application.
225.503 Group offers.
225.504 Evaluation examples.

225.502 Application.

(b) Use the following procedures instead of the procedures in FAR 25.502(b) for acquisitions subject to the Trade Agreements Act:

(i) Consider only offers of U.S.-made, qualifying country, or eligible end products, except as permitted by 225.403.

(ii) If price is the determining factor, award on the low offer.

(c) Use the following procedures instead of the procedures in FAR 25.502(c) for acquisitions subject to the Buy American Act or the Balance of Payments Program:

(i)(A) If the acquisition is subject only to the Buy American Act or the Balance of Payments Program, then only qualifying country end products are exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(B) If the acquisition is also subject to NAFTA, then NAFTA country end products are also exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(C) If the acquisition is also subject to the Trade Agreements Act, then designated country end products and Caribbean Basin Country end products are also exempt from application of the Buy American Act or Balance of Payments Program evaluation factor.

(ii) If price is the determining factor, use the following procedures:

(A) If the low offer is a domestic offer, award on that offer.

(B) If there are no domestic offers, award on the low offer (see example in 225.504(1)).

(C) If the low offer is a foreign offer that is exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, award on that offer. (If the low offer is a qualifying country offer from a country listed at 225.872–1(b) and the Trade Agreements Act does not apply, execute a determination in accordance with 225.872–4.)

(D) If the low offer is a foreign offer that is not exempt from application of the Buy American Act or Balance of Payments Program evaluation factor, and there is another foreign offer that is exempt, and is lower than the lowest domestic offer, award on the low foreign offer (see example in 225.504(2)).

(E) Otherwise, apply the 50 percent evaluation factor to the low foreign offer.

(*1*) If the price of the low domestic offer is less than the evaluated price of the low foreign offer, award on the low domestic offer (see example in 225.504(3)).

(*2*) If the evaluated price of the low foreign offer remains less than the low domestic offer, award on the low foreign offer (see example in 225.504(4)).

(iii) If price is not the determining factor, use the following procedures:

(A) If there are domestic offers, apply the 50 percent Buy American Act or Balance of Payments Program evaluation factor to all foreign offers unless an exemption applies.

(B) Evaluate in accordance with the criteria of the solicitation.

(C) If these procedures will not result in award on a domestic offer, reevaluate offers without the 50 percent factor. If this will result in award on an offer to which the Buy American Act or Balance of Payments Program applies, but evaluation in accordance with paragraph (c)(ii) of this section would result in award on a domestic offer, proceed with award only after execution of a determination in accordance with 225.103(a)(ii)(B), that domestic preference would be inconsistent with the public interest.

225.503 Group offers.

Evaluate group offers in accordance with FAR 25.503, but apply the evaluation procedures of 225.502.

225.504 Evaluation examples.

The following examples illustrate the evaluation procedures in 225.502(c)(ii). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement and that price is the determining factor in contract award. The same evaluation procedures and the 50 percent evaluation factor apply regardless of whether the acquisition is subject to the Buy American Act (BAA) or the Balance of Payments Program (BOPP).

(1) Example 1.

Offer A $945,000 Foreign offer subject to BAA/BOPP
Offer B $950,000 Foreign offer exempt from BAA/BOPP

Since no domestic offers are received, do not apply the evaluation factor. Award on Offer A.

(2) Example 2.

Offer A $950,000 Domestic offer
Offer B $890,000 Foreign offer exempt from BAA/BOPP
Offer C $880,000 Foreign offer subject to BAA/BOPP

Since the exempt foreign offer is lower than the domestic offer, do not apply the evaluation factor. Award on Offer C.

(3) Example 3.

Offer A $9,100 Foreign offer exempt from BAA/BOPP
Offer B $8,900 Domestic offer
Offer C $6,000 Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $9,000 for Offer C. Award on Offer B.

(4) Example 4.

Offer A $910,000 Foreign offer exempt from BAA/BOPP
Offer B $890,000 Domestic offer
Offer C $590,000 Foreign offer subject to BAA/BOPP

Since the domestic offer is lower than the exempt foreign offer, apply the 50 percent evaluation factor to Offer C. This results in an evaluated price of $885,000 for Offer C. Award on Offer C.

16. Subpart 225.6 is added to read as follows:

Subpart 225.6—Trade Sanctions

Sec.
225.670 Secondary Arab boycott of Israel.
225.670–1 Restriction.
225.670–2 Procedures.
225.670–3 Exceptions.
225.670–4 Waivers.

225.670 Secondary Arab boycott of Israel.

225.670–1 Restriction.

In accordance with 10 U.S.C. 2410i, do not enter into a contract with a foreign entity unless it has certified that it does not comply with the secondary Arab boycott of Israel.

225.670–2 Procedures.

For contracts awarded to the Canadian Commercial Corporation (CCC), the CCC will submit a certification from its proposed subcontractor with the other required precontractual information (see 225.870).

225.670–3 Exceptions.

This restriction does not apply to—

(a) Purchases at or below the simplified acquisition threshold;

(b) Contracts for consumable supplies, provisions, or services for the support of United States forces or of allied forces in a foreign country; or

(c) Contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes, or to the acquisition or lease thereof, in the interest of national security.

225.670–4 Waivers.

The Secretary of Defense may waive this restriction on the basis of national security interests. Forward waiver requests to the Director, Defense Procurement, ATTN: OUSD(AT&L)DP/FC, 3060 Defense Pentagon, Washington, DC 20301–3060.

17. Subpart 225.7 is revised to read as follows:

Subpart 225.7—Prohibited Sources

Sec.
225.770 Ownership or control by the government of a terrorist country.
225.770–1 Prohibition.
225.770–2 Procedures.
225.770–3 Waiver.

225.770 Ownership or control by the government of a terrorist country.

225.770–1 Prohibition.

(a) In accordance with 10 U.S.C. 2327(b), do not award a contract of $100,000 or more to a firm or to a subsidiary of a firm if the government of a terrorist country, either directly or indirectly, has a significant interest—

(1) In the firm; or

(2) In the subsidiary or the firm that owns the subsidiary.

(b) Do not consent to any subcontract with a firm, or a subsidiary of a firm, that the Secretary of Defense has identified as being owned or controlled by the government of a terrorist country unless the agency head states in writing the compelling reasons for the subcontract.

225.770–2 Procedures.

Forward any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror, through the head of the agency, to the Director, Defense Procurement, ATTN: OUSD(AT&L)DP/FC, 3060 Defense Pentagon, Washington, DC 20301–3060.

225.770–3 Waiver.

The Secretary of Defense may waive the prohibition in 225.770–1(a) in accordance with 10 U.S.C. 2327(c). The Secretary of Defense may not delegate this waiver authority.

18. Subpart 225.8 is revised to read as follows:

Subpart 225.8—Other International Agreements and Coordination

Sec.
225.802 Procedures.
225.802–70 Contracts for performance outside the United States and Canada.
225.802–71 End use certificates.
225.870 Contracting with Canadian contractors.
225.870–1 General.
225.870–2 Solicitation of Canadian contractors.
225.870–3 Submission of offers.
225.870–4 Contracting procedures.
225.870–5 Contract administration.
225.870–6 Termination procedures.
225.870–7 Acceptance of Canadian supplies.
225.870–8 Industrial security.
225.871 North Atlantic Treaty Organization cooperative projects.
225.871–1 Scope.
225.871–2 Definitions.
225.871–3 General.
225.871–4 Statutory waivers.
225.871–5 Directed subcontracting.
225.871–6 Disposal of property.
225.871–7 Congressional notification.
225.872 Contracting with qualifying country sources.
225.872–1 General.
225.872–2 Applicability.
225.872–3 Solicitation procedures.
225.872–4 Individual determinations.
225.872–5 Contract administration.
225.872–6 Audit.
225.872–7 Industrial security for qualifying countries.
225.872–8 Subcontracting with qualifying country sources.
225.873 Waiver of United Kingdom commercial exploitation levies.
225.873–1 Policy.
225.873–2 Procedures.

225.802 Procedures.

(b) Information on specific agreements is available as follows:

(i) Memoranda of understanding and other international agreements between the United States and the countries listed in 225.872–1 are maintained in the Foreign Contracting Directorate, Office of the Director of Defense Procurement ((703) 697–9351/2/3; DSN 227–9351/2/3).

(ii) Military Assistance Advisory Groups, Naval Missions, and Joint U.S. Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(iii) Copies of international agreements covering the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and the Middle East are filed with the U.S. European Command.

(iv) Agreements with countries in the Pacific and Far East are filed with the U.S. Pacific Command.

225.802–70 Contracts for performance outside the United States and Canada.

(a) When a contracting office anticipates placement of a contract for performance outside the United States and Canada, and the contracting office is not under the jurisdiction of a command for the country involved, the contracting office shall maintain liaison with the cognizant contract administration office (CAO) during preaward negotiations and postaward administration. The CAO will provide pertinent information for contract negotiations, effect appropriate coordination, and obtain required approvals for the performance of the contract.

(b) If the acquisition requires the performance of work in the foreign country by U.S. personnel or a third country contractor, or if the acquisition requires logistics support for contract employees, source inspection, or additional Government employees—

(1) The contracting officer shall coordinate with the CAO before contract award;

(2) The contracting officer shall request the following information from the CAO:

(i) The applicability of any international agreements to the acquisition.

(ii) Security requirements applicable to the area.

(iii) The standards of conduct for the prospective contractor and its employees and any consequences for violation of the standards of conduct.

(iv) Requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.

(v) Availability of logistical support for contractor employees.

(vi) Information on taxes and duties from which the Government may be exempt;

(3) The contracting officer shall furnish the following information to the CAO:

(i) A synopsis of the work to be performed and, if practical, a copy of the solicitation.

(ii) Any contractor logistical support desired in support of U.S. or foreign military sale requirements.

(iii) Contract performance period and estimated contract value.

(iv) Number and nationality of contractor employees and date of planned arrival of contractor personnel.

(v) Contract security requirements.

(vi) Other pertinent information to effect complete coordination and cooperation.

225.802–71 End use certificates.

Contracting officers considering the purchase of an item from a foreign source may encounter a request for the signing of a certificate to indicate that the Armed Forces of the United States is the end user of the item, and that the U.S. Government will not transfer the item to third parties without authorization from the Government of the country selling the item. When encountering this situation, refer to DoD Directive 2040.3, End Use Certificates, for guidance.

225.870 Contracting with Canadian contractors.

225.870–1 General.

(a) The Canadian Government guarantees to the U.S. Government all commitments, obligations, and

covenants of the Canadian Commercial Corporation under any contract or order issued to the Corporation by any contracting office of the U.S. Government. The Canadian Government has waived notice of any change or modification that may be made, from time to time, in these commitments, obligations, or covenants.

(b) For production planning purposes, Canada is part of the defense industrial base (see 225.870–2(b)).

(c) The Canadian Commercial Corporation will award and administer contracts with contractors located in Canada, except for—

(1) Negotiated acquisitions for experimental, developmental, or research work under projects other than the Defense Development Sharing Program;

(2) Acquisitions of unusual or compelling urgency;

(3) Acquisitions at or below the simplified acquisition threshold; or

(4) Acquisitions made by DoD activities located in Canada.

(d) The Canadian Commercial Corporation uses provisions in contracts with Canadian or U.S. concerns that give DoD the same production rights, data, and information that DoD would obtain in contracts with U.S. concerns.

(e) The Government of Canada will provide the following services under contracts with the Canadian Commercial Corporation without charge to DoD:

(1) *Contract administration services,* including—

(i) Cost and price analysis;

(ii) Industrial security;

(iii) Accountability and disposal of Government property;

(iv) Production expediting;

(v) Compliance with Canadian labor laws;

(vi) Processing of termination claims and disposal of termination inventory;

(vii) Customs documentation;

(viii) Processing of disputes and appeals; and

(ix) Such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier.

(2) *Audits.* The Public Works and Government Services Canada performs audits when needed. Route requests for audit on non-Canadian Commercial Corporation contracts through the cognizant contract management office of the Defense Contract Management Agency.

(3) *Inspection.* The Department of National Defence (Canada) provides inspection personnel, services, and facilities at no charge to DoD departments and agencies (see 225.870–7).

225.870–2 Solicitation of Canadian contractors.

(a) Except for acquisitions described in 225.870–1(c)(1) through (4), include Canadian firms on solicitation mailing lists and comparable source lists only at the request of the Canadian Commercial Corporation.

(b) Include Canadian planned producers under the Industrial Preparedness Production Planning Program on solicitation mailing lists for their planned items (see FAR 14.205–1).

(c) Send solicitations directly to Canadian firms appearing on the appropriate solicitation mailing lists. Send a complete copy of the solicitation and a listing of Canadian firms solicited to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, K1A–0S6, Canada.

(d) If requested, furnish a solicitation to the Canadian Commercial Corporation even if no Canadian firm is solicited.

(e) Handle acquisitions at or below the simplified acquisition threshold directly with Canadian firms and not through the Canadian Commercial Corporation.

225.870–3 Submission of offers.

(a) As indicated in 225.870–4, the Canadian Commercial Corporation is the prime contractor. To indicate acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information:

(1) Name of the Canadian offeror.

(2) Confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation.

(3) A statement that the Corporation shall subcontract 100 percent with the offeror.

(b) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the date for receipt of offers, the Corporation may permit Canadian firms to submit offers directly. However, the contracting officer shall receive the Canadian Commercial Corporation's endorsement before contract award.

(c) The Canadian Commercial Corporation will submit all sealed bids in terms of U.S. currency. Do not adjust contracts awarded under sealed bidding for losses or gains from fluctuation in exchange rates.

(d) Except for sealed bids, the Canadian Commercial Corporation normally will submit offers and quotations in terms of Canadian currency. The Corporation may, at the time of submitting an offer, elect to quote and receive payment in terms of U.S. currency, in which case the contract—

(1) Shall provide for payment in U.S. currency; and

(2) Shall not be adjusted for losses or gains from fluctuation in exchange rates.

225.870–4 Contracting procedures.

(a) Except for contracts described in 225.870–1(c)(1) through (4), award individual contracts covering purchases from suppliers located in Canada to the Canadian Commercial Corporation, 11th Floor, 50 O'Connor Street, Ottawa, Ontario, Canada, K1A–0S6.

(b) Direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, provided the Corporation's approval is obtained on any matters involving changes to the contract.

(c) Identify in the contract, the type of currency, *i.e.*, U.S. or Canadian. Contracts that provide for payment in Canadian currency shall—

(1) Quote the contract price in terms of Canadian dollars and identify the amount by the initials ''CN''; *e.g.*, $1,647.23CN; and

(2) Clearly indicate on the face of the contract the U.S./Canadian conversion rate at the time of award and the U.S. dollar equivalent of the Canadian dollar contract amount.

225.870–5 Contract administration.

(a) Assign contract administration in accordance with Part 242. When the Defense Contract Management Agency will perform contract administration in Canada, name in the contract the following payment office for disbursement of DoD funds (DoD Department Code: 17—Navy; 21—Army; 57—Air Force; 97—all other DoD components), whether payment is in Canadian or U.S. dollars: DFAS—Columbus Center; DFAS–CO/New Dominion Division; PO Box 182041; Columbus, OH 43218–2041.

(b) The following procedures apply to cost-reimbursement type contracts:

(1) The Public Works and Government Services Canada (PWGSC) automatically arranges audits on contracts with the Canadian Commercial Corporation.

(i) Consulting and Audit Canada (CAC) furnishes audit reports to PWGSC.

(ii) Upon advice from PWGSC, the Canadian Commercial Corporation certifies the invoice and forwards it with Standard Form (SF) 1034, Public Voucher, to the administrative

contracting officer for further processing and transmittal to the disbursing office.

(2) For contracts placed directly with Canadian firms, the administrative contracting officer requests audits from the CAC, Ottawa, Ontario, Canada.

(i) The CAC/PWGSC approves invoices on a provisional basis pending completion of the contract and final audit.

(ii) The CAC/PWGSC forwards these invoices, accompanied by SF 1034, Public Voucher, to the administrative contracting officer for further processing and transmittal to the disbursing officer.

(iii) The CAC/PWGSC furnishes periodic advisory audit reports directly to the administrative contracting officer.

225.870–6 Termination procedures.

(a) The Canadian Commercial Corporation will continue administering contracts that the U.S. contracting officer terminates.

(b) The Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(c) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts will be in accordance with this regulation.

225.870–7 Acceptance of Canadian supplies.

(a) For contracts placed in Canada, either with the Canadian Commercial Corporation or directly with Canadian suppliers, the Department of National Defence (Canada) will perform any necessary contract quality assurance and/or acceptance, as applicable.

(b) Signature by the Department of National Defence (Canada) quality assurance representative on the DoD inspection and acceptance form is satisfactory evidence of acceptance for payment purposes.

225.870–8 Industrial security.

Industrial security for Canada shall be in accordance with the U.S.-Canada Industrial Security Agreement of March 31, 1952, as amended.

225.871 North Atlantic Treaty Organization cooperative projects.

225.871–1 Scope.

This section—

(a) Implements 22 U.S.C. 2767 and 10 U.S.C. 2350b; and

(b) Provides guidance on awarding contracts for North Atlantic Treaty Organization (NATO) cooperative projects.

225.871–2 Definitions.

(a) *Cooperative project* means a jointly managed arrangement—

(1) Described in a written agreement between the parties;

(2) Undertaken to further the objectives of standardization, rationalization, and interoperability of the armed forces of NATO member countries; and

(3) Providing for—

(i) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(ii) Concurrent production in the United States and in another member country of a defense article jointly developed; or

(iii) Acquisition by the United States of a defense article or defense service from another member country.

(b) *Other participant* means a cooperative project participant other than the United States.

225.871–3 General.

(a) *Cooperative project authority.*

(1) Departments and agencies, that have authority to do so, may enter into cooperative project agreements with NATO or with one or more member countries of NATO under DoDD 5530.3, International Agreements.

(2) Under laws and regulations governing the negotiation and implementation of cooperative project agreements, departments and agencies may enter into contracts, or incur other obligations, on behalf of other participants without charge to any appropriation or contract authorization.

(3) Agency heads are authorized to solicit and award contracts to implement cooperative projects.

(b) Contracts implementing cooperative projects shall comply with all applicable laws relating to Government acquisition, unless a waiver is granted under 225.871–4. A waiver of certain laws and regulations may be obtained if the waiver—

(1) Is required by the terms of a written cooperative project agreement;

(2) Will significantly further NATO standardization, rationalization, and interoperability; and

(3) Is approved by the appropriate DoD official.

225.871–4 Statutory waivers.

(a) For contracts or subcontracts placed outside the United States, the Deputy Secretary of Defense may waive any provision of law that specifically prescribes—

(1) Procedures for the formation of contracts;

(2) Terms and conditions for inclusion in contracts;

(3) Requirements or preferences for—

(i) Goods grown, produced, or manufactured in the United States or in U.S. Government-owned facilities; or

(ii) Services to be performed in the United States; or

(4) Requirements regulating the performance of contracts.

(b) There is no authority for waiver of—

(1) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(2) Any provision of 10 U.S.C. 2304;

(3) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(4) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(c) Forward any request for waiver under a cooperative project to the Deputy Secretary of Defense, through the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics). The waiver request shall include a draft Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to significantly further NATO standardization, rationalization, and interoperability.

(d) Obtain the approval of the Deputy Secretary of Defense before committing to make a waiver in an agreement or a contract.

225.871–5 Directed subcontracting.

(a) The Director of Defense Procurement may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement.

(b) In some instances, it may not be feasible to name specific subcontractors at the time the agreement is concluded. However, the agreement shall clearly state the general provisions for work sharing at the prime and subcontract level.

(c) The agreement is the authority for a contractual provision requiring the contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

225.871–6 Disposal of property.

Dispose of property that is jointly acquired by the members of a cooperative project under the procedures established in the agreement or in a manner consistent with the terms of the agreement.

225.871–7 Congressional notification.

(a) Congressional notification is required when DoD makes a determination to award a contract or subcontract to a particular entity, if the determination was not part of the certification made under 22 U.S.C. 2767(f) before finalizing the cooperative agreement.

(1) Departments and agencies shall provide a proposed Congressional notice to the Director of Defense Procurement in sufficient time to forward to Congress before the time of contract award.

(2) The proposed notice shall include the reason it is necessary to use the authority to designate a particular contractor or subcontractor.

(b) Congressional notification is also required each time a statutory waiver under 225.871–4 is incorporated in a contract or a contract modification, if such information was not provided in the certification to Congress before finalizing the cooperative agreement.

225.872 Contracting with qualifying country sources.

225.872–1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of defense equipment that is mined, produced, or manufactured in any of the following countries (referred to in this part as ''qualifying countries''):

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions for products of the following qualifying countries may, on a purchase-by-purchase basis (see 225.872–4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest'

Austria
Finland
Sweden

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

225.872–2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DoDD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302–3(a)(2)(i) except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (*e.g.,* the annual DoD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

225.872–3 Solicitation procedures.

(a) Include qualifying country sources on solicitation mailing lists upon their request (see FAR 14.205).

(b) Except for items developed under the U.S./Canadian Development Sharing Program, use the criteria for soliciting and awarding contracts to small business concerns under FAR part 19 without regard to whether there are potential qualifying country sources for the end product. Do not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

(c) Send solicitations directly to qualifying country sources. Solicit Canadian sources through the Canadian Commercial Corporation in accordance with 225.870.

(d) Use international air mail if solicitation destinations are outside the United States and security classification permits such use.

(e) If unusual technical or security requirements preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, review the need for such requirements. Do not impose unusual technical or security requirements solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(f) Do not automatically exclude qualifying country sources from submitting offers because their supplies have not been tested and evaluated by the department or agency.

(1) Consider the adequacy of qualifying country service testing on a case-by-case basis. Departments or agencies that must limit solicitations to sources whose items have been tested and evaluated by the department or agency shall consider supplies from qualifying country sources that have been tested and accepted by the qualifying country for service use.

(2) The department or agency may perform a confirmatory test, if necessary.

(3) Apply U.S. test and evaluation standards, policies, and procedures when the department or agency decides that confirmatory tests of qualifying country end products are necessary.

(4) If it appears that these provisions might adversely delay service programs, obtain the concurrence of the Under Secretary of Defense (Acquisition, Technology, and Logistics), before excluding the qualifying country source from consideration.

(g) Permit industry representatives from a qualifying country to attend symposia, program briefings, prebid conferences (see FAR 14.207 and 15.201(c)), and similar meetings that address U.S. defense equipment needs and requirements. When practical, structure these meetings to allow attendance by representatives of qualifying country concerns.

225.872–4 Individual determinations.

(a) If the offer of an end product from a qualifying country source listed in 225.872–1(b), as evaluated, is low or otherwise eligible for award, prepare a determination and findings exempting the acquisition from the Buy American Act and Balance of Payments Program as inconsistent with the public interest, unless another exception such as the Trade Agreements Act applies.

(b) Obtain signature of the determination and findings—

(1) At a level above the contracting officer, if the acquisition is valued at $100,000 or less; or

(2) By the chief of the contracting office, if the acquisition is valued at more than $100,000.

(c) Prepare the determination and findings substantially as follows:

Service or Agency

Exemption of the Buy American Act and Balance of Payments Program

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.103(a), the acquisition of a qualifying country end product may be made as follows:

Findings

1. The (*contracting office*) proposes to purchase under contract number ____, (*describe item*) mined, produced, or manufactured in (*qualifying country of origin*). The total estimated cost of this acquisition is ____.

2. The United States Government and the Government of ____ have agreed to remove barriers to procurement at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The agreement provides that the Department of Defense will evaluate competitive offers of qualifying country end products mined, produced, or manufactured in (*qualifying country*) without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that such items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of such items shall fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. To achieve the foregoing objectives, the solicitation contained the clause (*title and number of the Buy American Act clause contained in the contract*). Offers were solicited from other sources and the offer received from (*offeror*) is found to be otherwise eligible for award.

Determination

I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act or the Balance of Payments Program to the offer described in this determination and findings.

_____

(Date)

_____

225.872–5 Contract administration.

(a) Arrangements exist with some qualifying countries to provide reciprocal contract administration services. Some arrangements are at no cost to either government. To determine whether such an arrangement has been negotiated and what contract administration functions are covered, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351/2/3, DSN 227–9351/2/3).

(b) When contract administration services are required on contracts to be performed in qualifying countries, direct the request to the cognizant activity listed in the Federal Directory of Contract Administration Services. The cognizant activity also will arrange contract administration services for DoD subcontracts that qualifying country sources place in the United States.

(c) The contract administration activity receiving a delegation shall determine whether any portions of the delegation are covered by memoranda of understanding annexes and, if so, shall delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is in subpart 246.4, Government Contract Quality Assurance.

225.872–6 Audit.

(a) Memoranda of understanding with some qualifying countries contain annexes that provide for reciprocal ''no-cost'' audits of contracts and subcontracts (pre- and post-award).

(b) To determine if such an annex is applicable to a particular qualifying country, contact the Deputy Director of Defense Procurement (Foreign Contracting), ((703) 697–9351/2/3, DSN 227–9351/2/3).

(c) Handle requests for audits in qualifying countries in accordance with 215.404–2(c).

(1) Except for the United Kingdom, send the request to the administrative contracting officer at the cognizant activity listed in Section 2B of the Federal Directory of Contract Administration Services. Send the request for audit from the United Kingdom directly to their Ministry of Defence.

(2) Send an advance copy of the request to the focal point identified by the Deputy Director of Defense Procurement (Foreign Contracting).

225.872–7 Industrial security for qualifying countries.

The required procedures for safeguarding classified defense information necessary for the performance of contracts awarded to qualifying country sources are in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–49; for the Navy by SECNAV Instruction 5510.1H; for the Air Force by AFI 31–601; for the Defense Information Systems Agency by DCA Instruction 240–110–8; and for the National Imagery and Mapping Agency by NIMA Instruction 5220.22).

225.872–8 Subcontracting with qualifying country sources.

In reviewing contractor subcontracting procedures, the contracting officer shall ensure that the contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations (see the clause at 252.225–7002, Qualifying Country Sources as Subcontractors).

225.873 Waiver of United Kingdom commercial exploitation levies.

225.873–1 Policy.

DoD and the Government of the United Kingdom (U.K.) have agreed to waive U.K. commercial exploitation levies and U.S. nonrecurring cost recoupment charges on a reciprocal basis. For U.K. levies to be waived, the offeror or contractor shall identify the levies and the contracting officer shall request a waiver before award of the contract or subcontract under which the levies are charged.

225.873–2 Procedures.

(a) The Government of the U.K. shall approve waiver of U.K. levies. When an offeror or contractor identifies a levy included in an offered or contract price, the contracting officer shall provide written notification to the Defense Security Cooperation Agency, ATTN: PSD–PMD, 1111 Jefferson Davis Highway, Arlington, VA 22202–4306, telephone (703) 601–3864. The Defense Security Cooperation Agency will request a waiver of the levy from the Government of the U.K. The notification shall include—

(1) Name of the U.K. firm;

(2) Prime contract number;

(3) Description of item for which waiver is being sought;

(4) Quantity being acquired; and

(5) Amount of levy.

(b) Waiver may occur after contract award. If levies are waived before contract award, evaluate the offer without the levy. If levies are identified but not waived before contract award, evaluate the offer inclusive of the levies.

19. Subpart 225.9 is revised to read as follows:

Subpart 225.9—Customs and Duties

Sec.
225.901 Policy.
225.902 Procedures.
225.903 Exempted supplies.

225.901 Policy.

Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (*e.g.*, the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and the contractor already has paid the duty, DoD will issue duty-free entry certificates for—

(1) Qualifying country supplies (end products and components);

(2) Eligible products (end products but not components) under contracts subject to the Trade Agreements Act or NAFTA; and

(3) Other foreign supplies for which the contractor estimates that duty will exceed $200 per unit (end product or component).

225.902 Procedures.

(1) *Formal entry and release.*

(i) The administrative contracting officer shall—

(A) Ensure that contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to provide the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(*1*) Verify the duty-free entitlement of supplies entering under the contract; and

(*2*) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMA New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Building 120, Staten Island, NY 10305–5013:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract.

Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(D) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMA New York.

(ii) The Customs Team, DCMAE–GNTF, DCMA New York—

(A) Is responsible for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract; and

(B) Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(2) *Immediate entry and release.* Importations made in the name of a DoD military facility or shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.903 Exempted supplies.

(b)(i) The term ''supplies''—

(A) Includes—

(*1*) Articles known as ''stores,'' such as food, medicines, and toiletries; and

(*2*) All consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes; and

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term ''equipment.''

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of, or attached to, Customs Form 7501. A duly designated officer or civilian official of the appropriate department or agency shall execute the certificate in the following form:

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____

(Title) _____

(Organization) _____

20. Subpart 225.11 is revised to read as follows:

Subpart 225.11—Solicitation Provisions and Contract Clauses

Sec.
225.1100 Scope of subpart.
225.1101 Acquisition of supplies.
225.1103 Other provisions and clauses.

225.1100 Scope of subpart.

This subpart prescribes the clauses that implement subparts 225.1 through 225.10. The clauses that implement subparts 225.70 through 225.75 are prescribed within those subparts.

225.1101 Acquisition of supplies.

(1) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts unless—

(i) All line items will be acquired from a particular source or sources under the authority of FAR 6.302–3;

(ii) All line items must be domestic or qualifying country end products in accordance with subpart 225.70. (However, the clause may still be required if subpart 225.70 requires manufacture of the end product in the United States or in the United States or Canada, without a corresponding requirement for use of domestic components);

(iii) An exception to the Buy American Act or Balance of Payments Program applies; or

(iv) One or both of the following clauses will apply to all line items in the contract:

(A) 252.225–7021, Trade Agreements.

(B) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) 252.225–7021, Trade Agreements.

(iii) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(4) Use the clause at 252.225–7013, Duty-Free Entry, instead of the clause at FAR 52.225–10. Do not use the clause for acquisitions of supplies for exclusive use outside the United States.

(5) Use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations that include the clause at 252.225–7021, Trade Agreements.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, when the Trade Agreements Act applies.

(ii) Do not use the clause if purchase from foreign sources is restricted, unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of trade agreements to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Trade Agreements clause.

(7) Use the provision at 252.225–7032, Waiver of United Kingdom Levies—Evaluation of Offers, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(8) Use the clause at 252.225–7033, Waiver of United Kingdom Levies, in solicitations and contracts if a U.K. firm is expected to—

(i) Submit an offer; or

(ii) Receive a subcontract exceeding $1 million.

(9) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations that include the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. Use the provision with its Alternate I when the clause at 252.225–7005 is used with its Alternate I.

(10)(i) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $169,000, and NAFTA applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds $56,190.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds $25,000 but is less than $56,190.

(ii) Do not use the clause if purchase from foreign sources is restricted (see 225.401(a)(2)), unless the contracting officer anticipates a waiver of the restriction.

(iii) The acquisition of eligible and noneligible products under the same contract may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause.

225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225–7005, Identification of Expenditures in the United States, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

(2) Use the provision at 252.225–7008, Disclosure of Ownership or Control by the Government of a Terrorist Country, in solicitations expected to result in contracts of $100,000 or more.

(3) Use the clause at 252.225–7009, Subcontracting with Firms Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of $100,000 or more.

(4) Unless an exception applies or a waiver has been granted in accordance with subpart 225.6, use the provision at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations.

(5) Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(6) Use the provision at 252.225–7042, Authorization to Perform, in solicitations when contract performance will be wholly or in part in a foreign country.

225.7000 [Amended]

21. Section 225.7000 is amended as follows:

a. In paragraph (a), in the first sentence, by removing ''Defense'' and adding in its place ''DoD''; and

b. In paragraph (b), by adding ''the'' before ''Balance of Payments Program''.

22. Section 225.7002–3 is amended by revising paragraph (c) to read as follows:

225.7002–3 Contract clauses.

* * * * *

(c) Use the clause at 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of hand or measuring tools.

225.7003 through 225.7023–3 [Removed]

23. Sections 225.7003 through 225.7023–3 are removed.

24. New sections 225.7003 through 225.7018–4 are added to read as follows:

225.7003 Waiver of restrictions of 10 U.S.C. 2534.

(a) Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(1)(i) The Under Secretary of Defense (Acquisition, Technology, and Logistics), without power of delegation, may waive a restriction for a particular item for a particular foreign country upon determination that—

(A) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(B) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal

procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(ii) A notice of the determination to exercise the waiver authority shall be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(iii) The effective period of the waiver shall not exceed 1 year.

(iv) For contracts entered into prior to the effective date of a waiver, provided adequate consideration is received to modify the contract, the waiver will be applied as directed or authorized in the waiver to—

(A) Subcontracts entered into on or after the effective date of the waiver; and

(B) Options for the procurement of items that are exercised after the effective date of the waiver, if the option prices are adjusted for any reason other than the application of the waiver.

(2) The head of the contracting activity may waive a restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(i) The restriction would cause unreasonable delays.

(ii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(iv) Application of the restriction is not in the national security interests of the United States.

(v) Application of the restriction would adversely affect a U.S. company.

(3) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S. or Canadian origin.

(b) In accordance with the provisions of paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom, including air circuit breakers for naval vessels, totally enclosed lifeboats, and ball and roller bearings (see 225.7006, 225.7008, and 225.7009). This waiver applies to—

(1) Procurements under solicitations issued on or after August 4, 1998; and

(2) Subcontracts and options under contracts entered into prior to August 4, 1998, under the conditions described in paragraph (a)(1)(iv) of this section.

225.7004 Restriction on acquisition of foreign buses.

225.7004–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

225.7004–2 Applicability.

Apply this restriction if the buses are purchased, leased, rented, or made available under contracts for transportation services.

225.7004–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount at or below the simplified acquisition threshold.

225.7004–4 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7005 Restriction on certain chemical weapons antidote.

225.7005–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Is a producer under the industrial preparedness program at the time of contract award;

(b) Has received all required regulatory approvals; and

(c) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

225.7005–2 Exception.

This restriction does not apply if the acquisition is for an amount at or below the simplified acquisition threshold.

225.7005–3 Waiver.

The waiver criteria at 225.7003(a) apply to this restriction.

225.7006 Restriction on air circuit breakers for naval vessels.

225.7006–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

225.7006–2 Exceptions.

This restriction does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support air circuit breakers manufactured outside the United States. Support includes the purchase of spare air circuit breakers when those from alternate sources are not interchangeable.

225.7006–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to this restriction.

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction for air circuit breakers manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7006–4 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7037, Evaluation of Offers for Air Circuit Breakers, in solicitations requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the provision.

(b) Use the clause at 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts requiring air circuit breakers for naval vessels unless—

(1) An exception applies; or

(2) A waiver has been granted, other than the waiver for the United Kingdom,

which has been incorporated into the clause.

225.7007 Restrictions on anchor and mooring chain.

225.7007–1 Restrictions.

(a) In accordance with section 8041 of the Fiscal Year 1991 DoD Appropriations Act (Public Law 101–511) and similar sections in subsequent DoD appropriations acts, do not acquire welded shipboard anchor and mooring chain, four inches or less in diameter, unless'

(1) It is manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States exceeds 50 percent of the total cost of components.

(b) 10 U.S.C. 2534 also restricts acquisition of welded shipboard anchor and mooring chain, four inches or less in diameter, when used as a component of a naval vessel. However, the Appropriations Act restriction described in paragraph (a) of this subsection takes precedence over the restriction of 10 U.S.C. 2534.

225.7007–2 Waiver.

(a) The Secretary of the department responsible for acquisition may waive the restriction in 225.7007–1(a), on a case-by-case basis, if—

(1) Sufficient domestic suppliers are not available to meet DoD requirements on a timely basis; and

(2) The acquisition is necessary to acquire capability for national security purposes.

(b) Document the waiver in a written determination and findings containing—

(1) The factors supporting the waiver; and

(2) A certification that the acquisition must be made in order to acquire capability for national security purposes.

(c) Provide a copy of the determination and findings to the House and Senate Committees on Appropriations.

225.7007–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7019, Restriction on Acquisition of Anchor and Mooring Chain, in solicitations and contracts requiring welded shipboard anchor or mooring chain four inches or less in diameter.

225.7008 Restrictions on totally enclosed lifeboat survival systems.

225.7008–1 Restrictions.

(a) In accordance with section 8124 of the Fiscal Year 1994 DoD Appropriations Act (Public Law 103–139) and section 8093 of the Fiscal Year 1995 DoD Appropriations Act (Public Law 103–335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless—

(1) 50 percent or more of the components are manufactured in the United States; and

(2) 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

(b) In accordance with 10 U.S.C. 2534(a), do not purchase a totally enclosed lifeboat that is a component of a naval vessel unless it is manufactured in the United States or Canada.

(1) 10 U.S.C. 2534(h) prohibits the use of a contract clause or certification to implement this restriction.

(2) Implement this restriction through management and oversight techniques that achieve the objective of the restriction without imposing a significant management burden on the Government or the contractor.

225.7008–2 Exceptions.

The restriction in 225.7008–1(b) does not apply if the acquisition is—

(a) For an amount at or below the simplified acquisition threshold; or

(b) For spare or repair parts needed to support totally enclosed lifeboats manufactured outside the United States.

225.7008–3 Waiver.

(a) The waiver criteria at 225.7003(a) apply to the restriction of 225.7008–1(b).

(b) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7008–1(b) for totally enclosed lifeboats manufactured in the United Kingdom. See 225.7003(b) for applicability.

225.7008–4 Contract clause.

Use the clause at 252.225–7039, Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems, in solicitations and contracts that require delivery of totally enclosed lifeboat survival systems.

225.7009 Restrictions on ball and roller bearings.

225.7009–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534, through fiscal year 2005, do not acquire ball and roller bearings or bearing components unless they are manufactured in the United States or Canada.

(b) In accordance with section 8099 of the DoD Appropriations Act for Fiscal Year 1996 (Public Law 104–61) and similar sections in subsequent DoD appropriations acts, do not acquire ball and roller bearings unless the bearings and bearing components are manufactured in the United States or Canada.

225.7009–2 Exceptions.

(a) The restriction in 225.7009–1(a) does not apply to—

(1) Acquisitions using simplified acquisition procedures, unless ball or roller bearings or bearing components are the end items being purchased;

(2) Commercial items incorporating ball or roller bearings;

(3) Miniature and instrument ball bearings needed to meet urgent military requirements;

(4) Items acquired overseas for use overseas; or

(5) Ball and roller bearings or bearing components, or items containing bearings, for use in a cooperative or co-production project under an international agreement. This exception does not apply to miniature and instrument ball bearings.

(b) The restriction in 225.7009–1(b) does not apply to contracts or subcontracts for the acquisition of commercial items, except for commercial ball and roller bearings acquired as end items.

225.7009–3 Waiver.

(a)(1) The waiver criteria at 225.7003(a)(1) apply to the restriction of 225.7009–1(a).

(2) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has waived the restriction of 225.7009–1(a) for ball and roller bearings manufactured in the United Kingdom. See 225.7003(b) for applicability.

(b) The head of the contracting activity may waive the restriction in 225.7009–1(a)—

(1) Upon execution of a determination and findings that—

(i) No domestic (U.S. or Canadian) bearing manufacturer meets the requirement;

(ii) It is not in the best interests of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing.

(A) This determination shall be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delay.

(B) A finding that a cost is unreasonable should take into

consideration DoD policy to assist the domestic industrial mobilization base.

(C) Contracts should be awarded to domestic bearing manufacturers to increase their capability to reinvest and become more competitive;

(iii) Application of the restriction would result in the existence of only one source for the item in the United States or Canada;

(iv) Application of the restriction is not in the national security interests of the United States; or

(v) Application of the restriction would adversely affect a U.S. company.

(2) If the acquisition is for an amount less than the simplified acquisition threshold and simplified acquisition procedures are being used.

(3) For multiyear contracts or contracts exceeding 12 months, except those for miniature and instrument ball bearings, if—

(i) The head of the contracting activity executes a determination and findings in accordance with paragraph (b)(1) of this subsection;

(ii) The contractor submits a written plan for transitioning from the use of nondomestic to domestically manufactured bearings;

(iii) The contractor's written plan—

(A) States whether a domestically manufactured bearing can be qualified, at a reasonable cost, for use during the course of the contract period;

(B) Identifies any bearings that are not domestically manufactured, their application, and source of supply; and

(C) Describes, including cost and timetable, the transition to a domestically manufactured bearing (The timetable for the transition should normally take no longer than 24 months from the date the waiver is granted); and

(iv) The contracting officer accepts the contractor's plan and incorporates it into the contract.

(4) For miniature and instrument ball bearings, only if the contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use.

(c) The Secretary of the department responsible for acquisition may waive the restriction in 225.7009–1(b), on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(1) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(2) The acquisition must be made in order to acquire capability for national security purposes.

225.7009–4 Contract clause.

(a) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, unless—

(1) The items being acquired do not contain ball and roller bearings; or

(2) An exception applies or a waiver has been granted, other than the waiver for the United Kingdom, which has been incorporated into the clause.

(b) Use the clause with its Alternate I in solicitations and contracts that use simplified acquisition procedures.

225.7010 Restriction on vessel propellers.

225.7010–1 Restriction.

In accordance with section 8064 of the National Defense Appropriations Act for Fiscal Year 2001 (Public Law 106–259), do not use fiscal year 2000 or 2001 funds to acquire vessel propellers other than those produced by a domestic source and of domestic origin, *i.e.*, vessel propellers—

(a) Manufactured in the United States or Canada; and

(b) For which all component castings were poured and finished in the United States or Canada.

225.7010–2 Exceptions.

This restriction does not apply to contracts or subcontracts for acquisition of commercial items.

225.7010–3 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate domestic supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7010–4 Contract clause.

Use the clause at 252.225–7023, Restriction on Acquisition of Vessel Propellers, in solicitations and contracts that use fiscal year 2000 or 2001 funds for the acquisition of vessels or vessel propellers, unless—

(a) An exception applies or a waiver has been granted; or

(b) The vessels being acquired do not contain vessel propellers.

225.7011 Restriction on carbon, alloy, and armor steel plate.

225.7011–1 Restriction.

In accordance with section 8111 of the Fiscal Year 1992 DoD Appropriations Act (Public Law 102–172) and similar sections in subsequent DoD appropriations acts, do not acquire any of the following types of carbon, alloy, or armor steel plate unless it is melted and rolled in the United States or Canada:

(a) Carbon, alloy, or armor steel plate in Federal Supply Class 9515.

(b) Carbon, alloy, or armor steel plate described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute.

225.7011–2 Waiver.

The Secretary of the department responsible for acquisition may waive this restriction, on a case-by-case basis, by certifying to the House and Senate Committees on Appropriations that—

(a) Adequate U.S. or Canadian supplies are not available to meet DoD requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7011–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7030, Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate, in solicitations and contracts that—

(a) Require the delivery to the Government of carbon, alloy, or armor steel plate that will be used in a facility owned by the Government or under the control of DoD; or

(b) Require contractors operating in a Government-owned facility or a facility under the control of DoD to purchase carbon, alloy, or armor steel plate.

225.7012 Restriction on supercomputers.

225.7012–1 Restriction.

In accordance with section 8112 of Public Law 100–202, and similar sections in subsequent DoD appropriations acts, do not purchase a supercomputer unless it is manufactured in the United States.

225.7012–2 Waiver.

The Secretary of Defense may waive this restriction, on a case-by-case basis, after certifying to the Armed Services and Appropriations Committees of Congress that—

(a) Adequate U.S. supplies are not available to meet requirements on a timely basis; and

(b) The acquisition must be made in order to acquire capability for national security purposes.

225.7012–3 Contract clause.

Unless a waiver has been granted, use the clause at 252.225–7011, Restriction on Acquisition of Supercomputers, in solicitations and contracts for the acquisition of supercomputers.

225.7013 Restrictions on construction or repair of vessels in foreign shipyards.

In accordance with 10 U.S.C. 7309—

(a) Do not award a contract to construct in a foreign shipyard—

(1) A vessel for any of the armed forces; or

(2) A major component of the hull or superstructure of a vessel for any of the armed forces; and

(b) Do not overhaul, repair, or maintain in a foreign shipyard, a naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) homeported in the United States. This restriction does not apply to voyage repairs.

225.7014 Restriction on overseas military construction.

For restriction on award of military construction contracts to be performed in the United States territories and possessions in the Pacific and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, see 236.274(a).

225.7015 Restriction on overseas architect-engineer services.

For restriction on award of architect-engineer contracts to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf, see 236.602–70.

225.7016 Restriction on research and development.

(a) In accordance with Public Law 92–570, do not use DoD appropriations to make an award to any foreign corporation, organization, person, or entity, for research and development in connection with any weapon system or other military equipment, if there is a U.S. corporation, organization, person, or entity—

(1) Equally competent; and

(2) Willing to perform at a lower cost.

(b) This restriction does not affect the requirements of FAR part 35 for selection of research and development contractors. However, when a U.S. source and a foreign source are equally competent, award to the source that will provide the services at the lower cost.

225.7017 Restriction on Ballistic Missile Defense research, development, test, and evaluation.

225.7017–1 Definitions.

Competent,'' ''foreign firm,'' and ''U.S. firm'' are defined in the provision at 252.225–7018, Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

225.7017–2 Restriction.

In accordance with section 222 of the DoD Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180), do not use any funds appropriated to or for the use of DoD to enter into or carry out a contract with a foreign government or firm, including any contract awarded as a result of a broad agency announcement, if the contract provides for the conduct of research, development, test, and evaluation (RDT&E) in connection with the Ballistic Missile Defense Program.

225.7017–3 Exceptions.

This restriction does not apply—

(a) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for RDT&E in connection with antitactical ballistic missile systems; or

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. Consider the foreign share as substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the cost should be correspondingly higher; or

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination that will be the basis for the certification.

(1) The determination shall—

(i) Describe the contract effort;

(ii) State the number of proposals solicited and received from both U.S. and foreign firms;

(iii) Identify the proposed awardee and the amount of the contract;

(iv) State that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the broad agency announcement; and

(v) State that a U.S. firm cannot competently perform the effort at a price equal to, or less than, the price at which the foreign awardee would perform it.

(2) When either a broad agency announcement or program research and development announcement is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination shall not be merely conclusory.

(i) The determination shall specifically explain its basis, include a description of the method used to determine the competency of U.S. firms, and describe the cost or price analysis performed.

(ii) Alternately, the determination may contain—

(A) A finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a broad agency announcement, program research and development announcement, or other solicitation document without any technical guidance from the program office; and

(B) A finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive acquisition is prohibited.

(3) Within 30 days after contract award, forward a copy of the certification and supporting documentation to the Ballistic Missile Defense Organization, ATTN: BMDO/DRI, 7100 Defense Pentagon, Washington, DC 20301–7100.

225.7017–4 Solicitation provision.

Unless foreign participation is otherwise excluded, use the provision at 252.225–7018, Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation, in competitively negotiated solicitations for RDT&E in connection with the Ballistic Missile Defense Program.

225.7018 Restriction on access to proscribed information.

225.7018–1 Definitions.

''Entity controlled by a foreign government,'' ''foreign government,'' and ''proscribed information,'' are defined in the provision at 252.225–7010, Disclosure of Ownership or Control by a Foreign Government.

225.7018–2 Restriction.

(a) In accordance with 10 U.S.C. 2536(a), do not award a contract under a national security program to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract.

(b) The contracting officer may seek advice regarding this restriction from the Director, Defense Security Programs, Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

225.7018–3 Waiver.

(a) Except as provided in paragraph (b) of this subsection, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence may waive the restriction in

225.7018–2 upon determining that the waiver is essential to the national security interests of the United States. Requests for waiver shall include a proposed national security interest determination that—

(1) Contains the solicitation and other reference numbers to identify the action;

(2) Identifies the proposed awardee and provides a synopsis of its foreign ownership;

(3) Provides a general description of the acquisition and performance requirements;

(4) Identifies the national security interests involved and the ways that award of the contract will help advance those interests;

(5) Provides a statement as to availability of another entity with the capacity, capability, and technical expertise to satisfy defense acquisition, technology base, or industrial base requirements; and

(6) Describes any alternate means available to satisfy the requirement, e.g., use of substitute products or technology or alternate approaches to accomplish the program objectives.

(b) In the case of a contract awarded for environmental restoration, remediation, or waste management at a DoD facility, the Secretary of Defense may waive this restriction upon—

(1) Determining that—

(i) The waiver will advance the environmental restoration, remediation, or waste management objectives of DoD and will not harm the national security interests of the United States; and

(ii) The entity to which the contract will be awarded is controlled by a foreign government with which the Secretary is authorized to exchange Restricted Data under section 144c of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)); and

(2) Notifying Congress of the decision to grant the waiver. Do not award the contract until the end of the 45-day period that begins on the date the appropriate Congressional committees received the notification.

(c) The requiring activity—

(1) Will prepare waiver requests in coordination with the contracting officer; and

(2) Will submit waiver requests through the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

225.7018–4 Solicitation provision.

Use the provision at 252.225–7010, Disclosure of Ownership or Control by a Foreign Government, in solicitations for contracts that will require contractor access to proscribed information.

25. Sections 225.7100 through 225.7103–3 are revised to read as follows:

225.7100 Scope of subpart.

This subpart contains foreign product restrictions that are based on policies designed to protect the defense industrial base.

225.7101 Definitions.

''Domestic manufacture'' is defined in the clause at 252.225–7025, Restriction on Acquisition of Forgings.

225.7102 Forgings.

225.7102–1 Policy.

When acquiring the following forging items, whether as end items or components, acquire items that are of domestic manufacture to the maximum extent practicable:

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

225.7102–2 Exceptions.

The policy in 225.7102–1 does not apply to acquisitions—

(a) Using simplified acquisition procedures, unless the restricted item is the end item being purchased;

(b) Overseas for overseas use; or

(c) When the quantity acquired exceeds the amount needed to maintain the U.S. defense mobilization base (provided the excess quantity is an economical purchase quantity). The requirement for domestic manufacture does not apply to the quantity above that required to maintain the base, in which case, qualifying country sources may compete.

225.7102–3 Waiver.

Upon request from a contractor, the contracting officer may waive the requirement for domestic manufacture of the items listed in 225.7102–1.

225.7102–4 Contract clause.

Use the clause at 252.225–7025, Restriction on Acquisition of Forgings, in solicitations and contracts, unless—

(a) The supplies being acquired do not contain any of the items listed in 225.7102–1; or

(b) An exception in 225.7102–2 applies. If an exception applies to only a portion of the acquisition, specify the excepted portion in the solicitation and contract.

225.7103 Polyacrylonitrile (PAN) carbon fiber.

225.7103–1 Policy.

DoD has imposed restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the 5-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 shall use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

225.7103–2 Waivers.

With the approval of the chief of the contracting office, the contracting officer may waive, in whole or in part, the requirement of the clause at 252.225–7022. For example, a waiver may be justified if a qualified U.S. or Canadian source cannot meet scheduling requirements.

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone C as defined in DoDI 5000.2, Operation of the Defense Acquisition System): or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in system development and demonstration (milestone B as defined in DoDI 5000.2).

26. Section 225.7200 is revised to read as follows:

225.7200 Scope of subpart.

This subpart—

(a) Prescribes procedures for contractor reporting and DoD monitoring of the volume, type, and nature of contract performance outside the United States; and

(b) Implements 10 U.S.C. 2410g, which requires offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada.

27. Sections 225.7202 and 225.7203 are revised to read as follows:

225.7202 Distribution of reports.

Forward a copy of reports submitted in accordance with the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, to the Deputy Director of Defense

Procurement (Foreign Contracting), OUSD(AT&L)DP(FC), Washington, DC 20301–3060. This is necessary to satisfy the requirement of 10 U.S.C. 2410g that the notifications (or copies) be maintained in compiled form for 5 years after the date of submission.

225.7203 Solicitation provision and contract clause.

Except for acquisitions described in 225.7201—

(a) Use the provision at 252.225–7003, Report of Intended Performance Outside the United States, in solicitations with a value exceeding $500,000; and

(b) Use the clause at 252.225–7004, Reporting of Contract Performance Outside the United States, in solicitations and contracts with a value exceeding $500,000.

28. Section 225.7301 is amended by revising paragraphs (b) through (d) to read as follows:

225.7301 General.

* * * * *

(b) Conduct FMS acquisitions under the same acquisition and contract management procedures used for other defense acquisitions.

(c) Separately identify known FMS requirements and the FMS customer in solicitations.

(d) Clearly identify contracts for known FMS requirements by marking ''FMS requirement'' on the face of the contract along with the FMS customer and the case identifier code.

29. Section 225.7302 is amended by revising the introductory text and paragraph (a)(4) to read as follows:

225.7302 Procedures.

For FMS programs that will require an acquisition, the contracting officer will assist the departmental/agency activity responsible for preparing the LOA by—

(a) * * *

(4) For noncompetitive acquisitions over $10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information shall identify the fact that the information is for a potential foreign military sale and shall identify the foreign customer; and

* * * * *

225.7303 [Amended]

30. Section 225.7303 is amended as follows:

a. In paragraph (a), in the first sentence, by removing the phrase ''as are'';

b. In paragraph (a), in the second sentence, by removing ''Application'' and adding in its place ''However, application''; and

c. In paragraph (b), in the first sentence, by removing ''must'' and adding in its place ''shall''.

31. Section 225.7303–2 is amended as follows:

a. In paragraph (a) introductory text, by revising the last sentence;

b. By revising paragraph (a)(1);

c. In paragraph (a)(2)(ii), by adding ''or'' before ''operations/tactics'';

d. By revising paragraph (c) introductory text; and

e. In paragraph (c)(1) by removing the period and adding in its place ''; and''. The revised text reads as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * * Examples of such costs include, but are not limited to, the following:

(1) Selling expenses (not otherwise limited by FAR Part 31), such as—

(i) Maintaining international sales and service organizations;

(ii) Sales commissions and fees in accordance with FAR Subpart 3.4;

(iii) Sales promotions, demonstrations, and related travel for sales to foreign governments. Section 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.8) may require Government approval for these costs to be allowable, in which case the appropriate Government approval shall be obtained; and

(iv) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

* * * * *

(c) The limitations for major contractors on independent research and development and bid and proposal (IR&D/B&P) costs for projects that are of potential interest to DoD, in 231.205–18(c)(iii), do not apply to FMS contracts, except as provided in 225.7303–5. The allowability of IR&D/B&P costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract's allocable share of the contractor's total IR&D/B&P expenditures. In pricing contracts for such FMS—

* * * * *

32. Section 225.7303–4 is revised to read as follows:

225.7303–4 Contingent fees.

(a) Except as provided in paragraph (b) of this subsection, contingent fees are generally allowable under DoD contracts, provided—

(1) The fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor for the purpose of securing business (see FAR part 31 and FAR subpart 3.4); and

(2) The contracting officer determines that the fees are fair and reasonable.

(b)(1) Under DoD 5105.38–M, LOAs for requirements for the governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) shall provide that all U.S. Government contracts resulting from the LOAs prohibit the reimbursement of contingent fees as an allowable cost under the contract, unless the contractor identifies the payments and the foreign customer approves the payments in writing before contract award (see 225.7308(a)).

(2) For FMS to countries not listed in paragraph (b)(1) of this subsection, contingent fees exceeding $50,000 per FMS case are unallowable under DoD contracts, unless the contractor identifies the payment and the foreign customer approves the payment in writing before contract award.

33. Section 225.7303–5 is amended by revising paragraphs (a) and (b) to read as follows:

225.7303–5 Acquisitions wholly paid for from nonrepayable funds.

(a) In accordance with 22 U.S.C. 2762(d), price FMS wholly paid for from funds made available on a nonrepayable basis on the same costing basis with regard to profit, overhead, IR&D/B&P, and other costing elements as is applicable to acquisitions of like items purchased by DoD for its own use.

(b) Direct costs associated with meeting a foreign customer's additional or unique requirements are allowable under such contracts. Indirect burden rates applicable to such direct costs are permitted at the same rates applicable to acquisitions of like items purchased by DoD for its own use.

* * * * *

34. Section 225.7305 is amended by revising the first sentence to read as follows:

225.7305 Limitation of liability.

Advise the contractor when the foreign customer will assume the risk for loss or damage under the appropriate limitation of liability clause(s) (see FAR subpart 46.8). * * *

35. Section 225.7308 is revised to read as follows:

225.7308 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts for FMS.

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts for the purchase of supplies and services for international military education training and FMS.

PART 242—CONTRACT ADMINISTRATION

242.302 [Amended]

36. Section 242.302 is amended by removing paragraph (a)(19).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.209–7001, 252.209–7002, and 252.209–7004 [Removed and Reserved]

37. Sections 252.209–7001, 252.209–7002, and 252.209–7004 are removed and reserved.

38. Section 252.212–7001 is amended as follows:

a. By revising the clause date and paragraph (b); and

b. In paragraph (c), in entry ''252.225–7014'', by removing ''(MAR 1998)'' and adding in its place ''(XXX 2002)''. The revised text reads as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (XXX 2002)

* * * * *

(b) The Contractor agrees to comply with any clause that is checked on the following list of Defense FAR Supplement clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components.

__ 252.205 7000 Provision of Information to Cooperative Agreement Holders (DEC 1991) (10 U.S.C. 2416).

__ 252.219–7003 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637).

__ 252.219–7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).

__ 252.225–7001 Buy American Act and Balance of Payments Program (XXX 2002) (41 U.S.C. 10a–10d, E.O. 10582).

__ 252.225–7012 Preference for Certain Domestic Commodities (APR 2002) (10 U.S.C. 2533a).

__ 252.225–7014 Preference for Domestic Specialty Metals (XXX 2002) (10 U.S.C. 2533a).

__ 252.225–7015 Restriction on Acquisition of Hand or Measuring Tools (XXX 2002) (10 U.S.C. 2533a).

__ 252.225 7016 Restriction on Acquisition of Ball and Roller Bearings (XXX 2002) (__ Alternate I) (DEC 2000) (10 U.S.C. 2534 and section 8099 of Public Law 104–61 and similar sections in subsequent DoD appropriations acts).

__ 252.225–7021 Trade Agreements (XXX 2002) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

__ 252.225–7027 Restriction on Contingent Fees for Foreign Military Sales (XXX 2002) (22 U.S.C. 2779).

__ 252.225–7028 Exclusionary Policies and Practices of Foreign Governments (XXX 2002) (22 U.S.C. 2755).

__ 252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (XXX 2002) (____ Alternate I) (XXX 2002) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

__ 252.225–7038 Preference for United States or Canadian Air Circuit Breakers (XXX 2002) (10 U.S.C. 2534(a)(3)).

__ 252.227–7015 Technical Data—Commercial Items (NOV 1995) (10 U.S.C. 2320).

__ 252.227–7037 Validation of Restrictive Markings on Technical Data (SEP 1999) (10 U.S.C. 2321).

__ 252.243–7002 Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

__ 252.247–7023 Transportation of Supplies by Sea (MAY 2002) (____ Alternate I) (MAR 2000) (____ Alternate II) (MAR 2000) (10 U.S.C. 2631).

__ 252.247–7024 Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631).

* * * * *

39. Sections 252.225–7000 through 252.225–7003 are revised to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1), use the following provision:

Buy American Act—Balance of Payments Program Certificate (XXX 2002)

(a) *Definitions. Domestic end product, foreign end product, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will evaluate offers of qualifying country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act and Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except those listed in paragraphs (c)(2) or (3) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror certifies that the following end products are qualifying country end products:

Line Item No.	Country of origin
_____	_____

(3) The following end products are other foreign end products:

Line Item No.	Country of origin (If known)
_____	_____

(End of provision)

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2), use the following clause:

Buy American Act and Balance of Payments Program (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(6) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(7) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–10d). Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, the Contractor shall deliver a qualifying country end product or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

252.225–7002 Qualifying Country Sources as Subcontractors.

As prescribed in 225.1101(3), use the following clause:

Qualifying Country Sources as Subcontractors (XXX 2002)

(a) *Definition. Qualifying country,* as used in this clause, means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation (FAR) Supplement.

(b) Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources or U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225–7003 Report of Intended Performance Outside the United States.

As prescribed in 225.7203(a), use the following provision:

Report of Intended Performance Outside the United States (XXX 2002)

(a) The offeror shall submit a Report of Contract Performance Outside the United States, with its offer, if—

(1) The offer exceeds $10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer.

(End of provision)

40. Section 252.225–7004 is added to read as follows:

252.225–7004 Reporting of Contract Performance Outside the United States.

As prescribed in 225.7203(b), use the following clause:

Reporting of Contract Performance Outside the United States (XXX 2002)

(a) *Reporting criteria.* Reporting under this clause is required for—

(1) Contracts exceeding $10 million in value, when any part that exceeds $500,000 in value could be performed inside the United States or Canada, but will be performed outside the United States and Canada. If the Contractor submitted the information with its offer, the Contractor need not resubmit the information unless it changes; and

(2) Contracts exceeding $500,000 in value, when any part that exceeds the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation will be performed outside the United States, unless—

(i) A foreign place of performance is the principal place of performance; and

(ii) The Contractor indicated the foreign place of performance in the Place of Performance provision of its offer.

(b) *Information required.* Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) *Submission of reports.* The Contractor—

(1) Shall submit reports required by paragraph (a)(1) of this clause to the Contracting Officer as soon as the information is known, with a copy to the addressee in paragraph (c)(2) of this clause. To the maximum extent practicable, the Contractor shall report information regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(2) Shall submit reports required by paragraph (a)(2) of this clause within 10 days after the end of each Government quarter to Deputy Director of Defense Procurement (Foreign Contracting), OUSD(AT&L)DP(FC), Washington, DC 20301–3060;

(3) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(4) May obtain copies of DD Form 2139 from the Contracting Officer.

(d) *Flowdown requirements.*

(1) The Contractor shall include the substance of this clause in all first-tier subcontracts exceeding $500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence.

(2) The Contractor shall provide the number of this contract to its subcontractors for reporting purposes.

(End of clause)

41. Sections 252.225–7008 through 252.225–7011 are revised to read as follows:

252.225–7008 Disclosure of Ownership or Control by the Government of a Terrorist Country.

As prescribed in 225.1103(2), use the following provision:

Disclosure of Ownership or Control by the Government of a Terrorist Country (XXX 2002)

(a) *Definitions.* As used in this provision—

(1) *Government of a terrorist country* includes the State and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) *Terrorist country* means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) ''Significant interest'' means—

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in ''nominee shares,'' ''street names,'' or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or an officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm, such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2327, DoD will not award a contract to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless the Secretary of Defense grants a waiver.

(c) *Disclosure.* If the government of a terrorist country has a significant interest in the offeror or a subsidiary of the offeror, the offeror shall disclose the interest in an

attachment to its offer. If the offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include—

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

252.225–7009 Subcontracting with Firms Owned or Controlled by the Government of a Terrorist Country.

As prescribed in 225.1103(3), use the following clause:

Subcontracting With Firms Owned or Controlled by the Government of a Terrorist Country (XXX 2002)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not enter into any subcontract exceeding $25,000 with a firm, or a subsidiary of a firm, that is—

(1) On the List of Parties Excluded from Federal Procurement and Nonprocurement Programs; and

(2) Identified on the List as being ineligible for the award of DoD contracts or subcontracts because the firm or subsidiary is owned or controlled by the government of a terrorist country.

(b) If the Contractor believes there is a compelling need to enter into a subcontract with a subcontractor described in paragraph (a) of this clause, the Contractor shall submit a written notice to the Contracting Officer that includes—

(1) The name of the proposed subcontractor; and

(2) The compelling reason(s) for doing business with the proposed subcontractor.

(End of clause)

252.225–7010 Disclosure of Ownership or Control by a Foreign Government.

As prescribed in 225.7018–4, use the following provision:

Disclosure of Ownership or Control by a Foreign Government (XXX 2002)

(a) *Definitions.* As used in this provision—

(1) *Effectively owned or controlled* means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the offeror's officers or a majority of the offeror's board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) *Entity controlled by a foreign government*—

(i) Means—

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government; and

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) *Foreign government* includes the State and the government of any country (other than the United States and its possessions and trust territories) as well as any political subdivision, agency, or instrumentality thereof.

(4) *Proscribed information* means—

(i) Top Secret information;

(ii) Communications Security (COMSEC) information, except classified keys used to operate secure telephone units (STU IIIs);

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) *Prohibition on award.* No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) *Disclosure.* The offeror shall disclose any interest a foreign government has in the offeror when that interest constitutes control by a foreign government as defined in this provision. If the offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the offeror's immediate parent, intermediate parents, and the ultimate parent. Use a separate sheet if necessary, and provide the information in the following format:

Offeror's Point of Contact for Questions about Disclosure (Name and Phone Number with Country Code, City Code and Area Code, as applicable):

Name and Address of Offeror:

Name and Address of Entity Controlled by a Foreign Government: Description of Interest, Ownership Percentage, and Identification of Foreign Government:

(End of provision)

252.225–7011 Restriction on Acquisition of Supercomputers.

As prescribed in 225.7012–3, use the following clause:

Restriction on Acquisition of Supercomputers (XXX 2002)

Supercomputers delivered under this contract shall be manufactured in the United States.

(End of clause)

42. Section 252.225–7013 is added to read as follows:

252.225–7013 Duty-Free Entry.

As prescribed in 225.1101(4), use the following clause:

Duty-Free Entry (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Eligible product* means—

(i) ''Designated country end product'' or ''Caribbean Basin country end product'' as defined in the Trade Agreements clause of this contract;

(ii) ''NAFTA country end product'' as defined in the Trade Agreements clause or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract; or

(iii) ''Canadian end product'' as defined in Alternate I of the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(2) *Qualifying country* and *qualifying country end product* have the meanings given in the Trade Agreements clause, the Buy American Act and Balance of Payments Program clause, or the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this contract.

(b) Except as provided in paragraph (i) of this clause, or unless supplies were imported into the United States before the date of this contract or the applicable subcontract, the price of this contract shall not include any amount for duty on—

(1) End items that are eligible products or qualifying country end products;

(2) Components (including, without limitation, raw materials and intermediate assemblies) produced or made in qualifying countries, that are to be incorporated in U.S.-made end products to be delivered under this contract; or

(3) Other supplies for which the Contractor estimates that duty will exceed $200 per unit (end product or component).

(c) The Contractor shall—

(1) Claim duty-free entry only for supplies that the Contractor intends to deliver to the Government under this contract, either as end items or components of end items; and

(2) Pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use, other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer.

(d) Except as the Contractor may otherwise agree, the Government will execute duty-free entry certificates and will afford such assistance as appropriate to obtain the duty-free entry of supplies—

(1) For which no duty is included in the contract price in accordance with paragraph (b) of this clause; and

(2) For which shipping documents bear the notation specified in paragraph (e) of this clause.

(e) For foreign supplies for which the Government will issue duty-free entry certificates in accordance with this clause, shipping documents submitted to Customs shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information:

(i) Prime contract number and, if applicable, delivery order number.

(ii) Number of the subcontract for foreign supplies, if applicable.

(iii) Identification of the carrier.

(iv)(A) For direct shipments to a U.S. military installation, the notation: ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE, Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Agency (DCMA) New York, ATTN: Customs Team, DCMAE–GNTF, 207 New York Avenue, Staten Island, New York 10305–5013, for execution of Customs Form 7501, 7501A, or 7506 and any required duty-free entry certificates.''

(B) If the shipment will be consigned to other than a military installation, *e.g.*, a domestic contractor's plant, the shipping document notation shall be altered to include the name and address of the contractor, agent, or broker who will notify Commander, DCMA New York, for execution of the duty-free entry certificate. (If the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required due to NAFTA or another trade agreement, the Contractor shall claim duty-free entry under NAFTA or the applicable trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, DCMA New York, is required.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight).

(vi) Estimated value in U.S. dollars.

(vii) Activity address number of the contract administration office administering the prime contract, *e.g.*, for DCMA Dayton, S3605A.

(f) *Preparation of customs forms.*

(1)(i) Except for shipments consigned to a military installation, the Contractor shall—

(A) Prepare any customs forms required for the entry of foreign supplies into the United States in connection with this contract; and

(B) Submit the completed customs forms to the District Director of Customs, with a copy to DCMA NY for execution of any required duty-free entry certificates.

(ii) Shipments consigned directly to a military installation will be released in accordance with sections 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(g) The Contractor shall—

(1) Prepare (if the Contractor is a foreign supplier), or shall instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) Consign the shipment as specified in paragraph (e) of this clause; and

(3) Mark on the exterior of all packages—

(i) ''UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE'; and

(ii) The activity address number of the contract administration office administering the prime contract.

(h) The Contractor shall notify the Administrative Contracting Officer (ACO) in writing of any purchase of qualifying country supplies to be accorded duty-free entry, that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The Contractor shall furnish the notice to the ACO immediately upon award to the qualifying country supplier and shall include in the notice—

(1) The Contractor's name, address, and Commercial and Government Entity (CAGE) code;

(2) Prime contract number and, if applicable, delivery order number;

(3) Total dollar value of the prime contract or delivery order;

(4) Date of the last scheduled delivery under the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Date of the last scheduled delivery under the subcontract for foreign supplies;

(9) List of items purchased;

(10) An agreement that the Contractor will pay duty on supplies, or any portion thereof, that are diverted to nongovernmental use other than—

(i) Scrap or salvage; or

(ii) Competitive sale made, directed, or authorized by the Contracting Officer;

(11) Qualifying country of origin; and

(12) Scheduled delivery date(s).

(i) This clause does not apply to purchases of qualifying country supplies in connection with this contract if—

(1) The supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(j) The Contractor shall—

(1) Insert the substance of this clause, including this paragraph (j), in all subcontracts for—

(i) Qualifying country components; or

(ii) Nonqualifying country components for which the Contractor estimates that duty will exceed $200 per unit;

(2) Require subcontractors to include the number of this contract on all shipping documents submitted to Customs for supplies for which duty-free entry is claimed pursuant to this clause; and

(3) Include in applicable subcontracts—

(i) The name and address of the ACO for this contract;

(ii) The name, address, and activity address number of the contract administration office specified in this contract; and

(iii) The information required by paragraphs (h)(1), (2), and (3) of this clause.

(End of clause)

43. Sections 252.225–7014 through 252.225–7016 are revised to read as follows:

252.225–7014 Preference for Domestic Specialty Metals.

As prescribed in 225.7002–3(b)(1), use the following clause:

Preference for Domestic Specialty Metals (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Qualifying country* means any country listed in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(2) *Specialty metals* means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States, its possessions, or Puerto Rico.

(c) This clause does not apply to specialty metals—

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or

(2) Purchased by a subcontractor at any tier.

(End of clause)

Alternate I (XXX 2002)

As prescribed in 225.7002–3(b)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to specialty metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country.

(d) The Contractor shall insert the substance of this clause, including this

paragraph (d), in all subcontracts for items containing specialty metals.

252.225–7015 Restriction on Acquisition of Hand or Measuring Tools.

As prescribed in 225.7002–3(c), use the following clause:

Restriction on Acquisition of Hand or Measuring Tools (XXX 2002)

Hand or measuring tools delivered under this contract shall be produced in the United States or its possessions.

(End of clause)

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

As prescribed in 225.7009–4(a), use the following clause:

Restriction on Acquisition of Ball and Roller Bearings (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Bearing components* means the bearing element, retainer, inner race, or outer race.

(2) *Miniature and instrument ball bearings* means all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, regardless of material, tolerance, performance, or quality characteristics.

(b) Except as provided in paragraph (c) of this clause, all ball and roller bearings and ball and roller bearing components (including miniature and instrument ball bearings) delivered under this contract, either as end items or components of end items, shall be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube, or rod stock and lubricants, need not be mined or produced in the United States or Canada.

(c)(1) The restriction in paragraph (b) of this clause does not apply to ball or roller bearings that are acquired as components if—

(i) The end items or components containing ball or roller bearings are commercial items; or

(ii) The ball or roller bearings are commercial components manufactured in the United Kingdom.

(2) The commercial item exception in paragraph (c)(1) of this clause does not include items designed or developed under a Government contract if the end item is bearings or bearing components.

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement. If the restriction is waived for miniature and instrument ball bearings, the Contractor shall acquire a like quantity and type of domestic manufacture for nongovernmental use.

(e) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts, except those for—

(1) Commercial items other than ball or roller bearings; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

Alternate I (DEC 2000)

As prescribed in 225.7009–4(b), substitute the following paragraph (c)(1)(ii) for paragraph (c)(1)(ii) of the basic clause:

(c)(1)(ii) The ball or roller bearings are commercial components.

252.225–7017 [Removed and Reserved]

44. Section 252.225–7017 is removed and reserved.

45. Sections 252.225–7018 through 252.225–7021 are revised to read as follows:

252.225–7018 Notice of Prohibition of Certain Contracts with Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation.

As prescribed in 225.7017–4, use the following provision:

Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Ballistic Missile Defense Research, Development, Test, and Evaluation (XXX 2002)

(a) *Definitions.*

(1) *Competent* means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal, including consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

(2) *Foreign firm* means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

(3) *U.S. firm* means a business entity other than a foreign firm.

(b) Except as provided in paragraph (c) of this provision, the Department of Defense will not enter into or carry out any contract, including any contract awarded as a result of a broad agency announcement, with a foreign government or firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Ballistic Missile Defense Program. However, foreign governments and firms are encouraged to submit offers, since this provision is not intended to restrict access to unique foreign expertise if the contract will require a level of competency unavailable in the United States.

(c) This prohibition does not apply to a foreign government or firm if—

(1) The contract will be performed within the United States;

(2) The contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems;

(3) The foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share is considered substantial if it is equitable with respect to the relative benefits that the United States and the foreign parties will derive from the contract. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that a U.S. firm cannot competently perform the contract at a price equal to or less than the price at which a foreign government or firm can perform the contract.

(d) The offeror (___) is (___) is not a U.S. firm.

(End of provision)

252.225–7019 Restriction on Acquisition of Foreign Anchor and Mooring Chain.

As prescribed in 225.7007–3, use the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain (XXX 2002)

(a) Welded shipboard anchor and mooring chain, four inches or less in diameter, delivered under this contract—

(1) Shall be manufactured in the United States, including cutting, heat treating, quality control, testing, and welding (both forging and shot blasting process); and

(2) The cost of the components manufactured in the United States shall exceed 50 percent of the total cost of components.

(b) The Contractor may request a waiver of this restriction if adequate domestic supplies meeting the requirements in paragraph (a) of this clause are not available to meet the contract delivery schedule.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

(End of clause)

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5), use the following provision:

Trade Agreements Certificate (XXX 2002)

(a) *Definitions. Caribbean Basin country end product, designated country end product, NAFTA country end product, nondesignated country end product, qualifying country end product,* and *U.S.-made end product* have the meanings given in the Trade Agreements clause of this solicitation.

(b) *Evaluation.* The Government—

(1) Will evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) Will consider only offers of end products that are U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, unless the Government determines that—

(i) There are no offers of such end products;

(ii) The offers of such end products are insufficient to fulfill the Government's requirements; or

(iii) A national interest exception to the Trade Agreements Act applies.

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2) of this provision, is a U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end product.

(2) The following supplies are other nondesignated country end products:

(insert line item number)
(insert country of origin)

(End of provision)

252.225–7021 Trade Agreements.

As prescribed in 225.1101(6), use the following clause:

Trade Agreements (XXX 2002)

(a) Definitions. As used in this clause—

(1) *Caribbean Basin country* means—

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
British Virgin Islands
Costa Rica
Dominica
El Salvador
Grenada
Guatemala
Guyana
Haiti
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
St. Kitts-Nevis
St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) *Caribbean Basin country end product*

(i) Means an article that—

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of—

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type, including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(3) *Component* means an article, material, or supply incorporated directly into an end product.

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Republic of Korea
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

(5) *Designated country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the designated country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(7) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) *Nondesignated country end product* means any end product that is not a U.S.-made end product or a designated country end product.

(9) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(10) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(11) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following

types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(12) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) *U.S.-made end product* means an article that—

(i) Is mined, produced, or manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501, *et seq.*), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative. Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, designated country, Caribbean Basin country, or NAFTA country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2) The Government determines that—

(i) Offers of U.S.-made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest exception to the Trade Agreements Act applies.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(e) The HTSUS is available on the Internet at *http://www.customs.ustreas.gov/impoexpo/impoexpo.htm*. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States—Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States—Caribbean Basin Trade Partnership Act.

(End of clause)

252.225–7022 [Amended]

46. Section 252.225–7022 is amended by revising the clause date to read ''(XXX 2002)''; and in paragraph (a) by removing ''only''.

252.225–7023 [Amended]

47. Section 252.225–7023 is amended in the introductory text by removing ''225.7020–4'' and adding in its place ''225.7010–4''.

252.225–7024 [Removed and Reserved]

48. Section 252.225–7024 is removed and reserved.

49. Section 252.225–7025 is revised to read as follows:

252.225–7025 Restriction on Acquisition of Forgings.

As prescribed in 225.7102–4, use the following clause:

Restriction on Acquisition of Forgings (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Domestic manufacture* means manufactured in the United States or Canada if the Canadian firm—

(i) Normally produces similar items or is currently producing the item in support of DoD contracts (as a contractor or a subcontractor); and

(ii) Agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Production Planning Program, if it is not already a planned producer for the item.

(2) *Forging items* means—

Items	Categories
Ship propulsion shafts	Excludes service and landing craft shafts.
Periscope tubes	All.
Ring forgings for bull gears.	All greater than 120 inches in diameter.

(b) End items and their components delivered under this contract shall contain forging items that are of domestic manufacture only.

(c) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7102–3 of the Defense Federal Acquisition Regulation Supplement.

(d) The Contractor shall retain records showing compliance with the restriction in paragraph (b) of this clause until 3 years after final payment and shall make the records available upon request of the Contracting Officer.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in subcontracts for forging items or for other items that contain forging items.

(End of clause)

252.225–7026 [Removed and Reserved]

50. Section 252.225–7026 is removed and reserved.

51. Sections 252.225–7027 and 252.225–7028 are revised to read as follows:

252.225–7027 Restriction on Contingent Fees for Foreign Military Sales.

As prescribed in 225.7308(a), use the following clause:

Restriction on Contingent Fees for Foreign Military Sales (XXX 2002)

(a) Except as provided in paragraph (b) of this clause, contingent fees, as defined in the Covenant Against Contingent Fees clause of this contract, are generally an allowable cost, provided the fees are paid to—

(1) A bona fide employee of the Contractor; or

(2) A bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

(b) For foreign military sales, unless the contingent fees have been identified and payment approved in writing by the foreign customer before contract award, the following contingent fees are unallowable under this contract:

(1) For sales to the Government(s) of _____, contingent fees in any amount.

(2) For sales to Governments not listed in paragraph (b)(1) of this clause, contingent fees exceeding $50,000 per foreign military sale case.

(End of clause)

252.225–7028 Exclusionary Policies and Practices of Foreign Governments.

As prescribed in 225.7308(b), use the following clause:

Exclusionary Policies and Practices of Foreign Governments (XXX 2002)

The Contractor and its subcontractors shall not take into account the exclusionary policies or practices of any foreign government in employing or assigning personnel, if—

(a) The personnel will perform functions required by this contract, either in the United States or abroad; and

(b) The exclusionary policies or practices of the foreign government are based on race, religion, national origin, or sex.

(End of clause)

252.225–7029 [Removed and Reserved]

52. Section 252.225–7029 is removed and reserved.

53. Sections 252.225–7030 through 252.225–7033 are revised to read as follows:

252.225–7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate.

As prescribed in 225.7011–3, use the following clause:

Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (XXX 2002)

Carbon, alloy, and armor steel plate shall be melted and rolled in the United States or Canada if the carbon, alloy, or armor steel plate—

(a) Is in Federal Supply Class 9515 or is described by specifications of the American Society for Testing Materials or the American Iron and Steel Institute; and

(b) Will be delivered to the Government or will be purchased by the Contractor as a raw

material for use in a Government-owned facility or a facility under the control of the Department of Defense.

(End of clause)

252.225–7031 Secondary Arab Boycott of Israel.

As prescribed in 225.1103(4), use the following provision:

Secondary Arab Boycott of Israel (XXX 2002)

(a) *Definitions.* As used in this provision—

(1) *Foreign person* means any person (including any individual, partnership, corporation, or other form of association) other than a United States person.

(2) *United States person* is defined in 50 U.S.C. App. 2415(2) and means—

(i) Any United States resident or national (other than an individual resident outside the United States who is employed by other than a United States person);

(ii) Any domestic concern (including any permanent domestic establishment of any foreign concern); and

(iii) Any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern.

(b) *Certification.* If the offeror is a foreign person, the offeror certifies, by submission of an offer, that it—

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. 2407(a) prohibits a United States person from taking.

(End of provision)

252.225–7032 Waiver of United Kingdom Levies—Evaluation of Offers.

As prescribed in 225.1101(7), use the following provision:

Waiver of United Kingdom Levies—Evaluation of Offers (XXX 2002)

(a) Offered prices for contracts or subcontracts with United Kingdom (U.K.) firms may contain commercial exploitation levies assessed by the Government of the U.K. The offeror shall identify to the Contracting Officer all levies included in the offered price by describing—

(1) The name of the U.K. firm;

(2) The item to which the levy applies and the item quantity; and

(3) The amount of levy plus any associated indirect costs and profit or fee.

(b) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the offeror may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue NW., Washington, DC 20006.

(c) The U.S. Government may attempt to obtain a waiver of levies pursuant to the U.S./U.K. reciprocal waiver agreement of July 1987.

(1) If the U.K. waives levies before award of a contract, the Contracting Officer will evaluate the offer without the levy.

(2) If levies are identified but not waived before award of a contract, the Contracting Officer will evaluate the offer inclusive of the levies.

(3) If the U.K. grants a waiver of levies after award of a contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(End of provision)

252.225–7033 Waiver of United Kingdom Levies.

As prescribed in 225.1101(8), use the following clause:

Waiver of United Kingdom Levies (XXX 2002)

(a) The U.S. Government may attempt to obtain a waiver of any commercial exploitation levies included in the price of this contract, pursuant to the U.S./United Kingdom (U.K.) reciprocal waiver agreement of July 1987. If the U.K. grants a waiver of levies included in the price of this contract, the U.S. Government reserves the right to reduce the contract price by the amount of the levy waived plus associated indirect costs and profit or fee.

(b) If the Contractor contemplates award of a subcontract exceeding $1 million to a U.K. firm, the Contractor shall provide the following information to the Contracting Officer before award of the subcontract:

(1) Name of the U.K. firm.

(2) Prime contract number.

(3) Description of item to which the levy applies.

(4) Quantity being acquired.

(5) Amount of levy plus any associated indirect costs and profit or fee.

(c) In the event of difficulty in identifying levies included in a price from a prospective subcontractor, the Contractor may seek advice through the Director of Procurement, United Kingdom Defence Procurement Office, British Embassy, 3100 Massachusetts Avenue, NW., Washington, DC 20006.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in any subcontract for supplies where a lower-tier subcontract exceeding $1 million with a U.K. firm is anticipated.

(End of clause)

54. Sections 252.225–7035 through 252.225–7039 are revised to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(9), use the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (XXX 2002)

(a) *Definitions. Domestic end product, foreign end product, NAFTA country end product, qualifying country end product,* and *United States* have the meanings given in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation.

(b) *Evaluation.* The Government will—

(1) Evaluate offers in accordance with the policies and procedures of part 225 of the Defense Federal Acquisition Regulation Supplement; and

(2) For line items subject to the North American Free Trade Agreement Implementation Act, will evaluate offers of qualifying country end products or NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c) *Certifications and identification of country of origin.*

(1) For all line items subject to the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program clause of this solicitation, the offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product; and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country (except Canadian) end products:

_____

_____

(ii) The offeror certifies that the following supplies are NAFTA country end products:

_____

_____

(iii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products.

_____

_____

(End of provision)

Alternate I (XXX 2002)

As prescribed in 225.1101(9), substitute the phrase ''Canadian end product'' for the phrase ''NAFTA country end product'' in paragraph (a) of the basic provision; and substitute the phrase ''Canadian end products'' for the phrase ''NAFTA country end products'' in paragraphs (b) and (c)(2)(ii) of the basic provision.

252.225–7036 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

As prescribed in 225.1101(10)(i), use the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Component* means an article, material, or supply incorporated directly into an end product.

(2) *Domestic end product* means—

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that

are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate is issued). Scrap generated, collected, and prepared for processing in the United States is considered domestic. A component is considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind for which the Government has determined that—

(A) Sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States; or

(B) It is inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) *End product* means those articles, materials, and supplies to be acquired under this contract for public use.

(4) *Foreign end product* means an end product other than a domestic end product.

(5) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(6) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) *Qualifying country* means any country set forth in subsection 225.872–1 of the Defense Federal Acquisition Regulation Supplement.

(8) *Qualifying country component* means a component mined, produced, or manufactured in a qualifying country.

(9) *Qualifying country end product* means—

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the following types of components exceeds 50 percent of the cost of all its components:

(A) Components mined, produced, or manufactured in a qualifying country.

(B) Components mined, produced, or manufactured in the United States.

(C) Components of foreign origin of a class or kind for which the Government has determined that sufficient and reasonably available commercial quantities of a satisfactory quality are not mined, produced, or manufactured in the United States.

(10) *United States* means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–10d), the Balance of Payments Program, and the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note). Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a NAFTA country end product, the Contractor shall deliver a qualifying country end product, a NAFTA country end product, or, at the Contractor's option, a domestic end product.

(d) The contract price does not include duty for end products or components for which the Contractor will claim duty-free entry.

(End of clause)

Alternate I (XXX 2002)

As prescribed in 225.1101(10)(i)(B), substitute the following paragraphs (a)(6), (b), and (c) for paragraphs (a)(6), (b), and (c) of the basic clause:

(a)(6) ''Canadian end product,'' means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself.

(b) This clause implements the Buy American Act (41 U.S.C. 10a–10d), the Balance of Payments Program, and the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note). Unless otherwise specified, this clause applies to all items in the Schedule.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, Canadian, or other foreign end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or a Canadian end product, the Contractor shall deliver a qualifying country end product, a Canadian end product, or, at the Contractor's option, a domestic end product.

252.225–7037 Evaluation of Offers for Air Circuit Breakers.

As prescribed in 225.7006–4(a), use the following provision:

Evaluation of Offers for Air Circuit Breakers (XXX 2002)

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are not manufactured in the United States, Canada, or the United Kingdom.

(End of provision)

252.225–7038 Restriction on Acquisition of Air Circuit Breakers.

As prescribed in 225.7006–4(b), use the following clause:

Restriction on Acquisition of Air Circuit Breakers (XXX 2002)

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States, Canada, or the United Kingdom.

(End of clause)

252.225–7039 Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems.

As prescribed in 225.7008–4, use the following clause:

Restriction on Acquisition of Totally Enclosed Lifeboat Survival Systems (XXX 2002)

The Contractor shall deliver under this contract totally enclosed lifeboat survival systems (consisting of the lifeboat and associated davits and winches), for which—

(a) 50 percent or more of the components have been manufactured in the United States; and

(b) 50 percent or more of the labor in the manufacture and assembly of the entire system has been performed in the United States.

(End of clause)

252.225–7041 [Amended]

55. Section 252.225–7041 is amended in the introductory text by removing ''225.1103(2)'' and adding in its place ''225.1103(5)''.

56. Section 252.225–7042 is revised to read as follows:

252.225–7042 Authorization to Perform.

As prescribed in 225.1103(6), use the following provision:

Authorization To Perform (XXX 2002)

The offeror represents that it has been duly authorized to operate and to do business in

the country or countries in which the contract is to be performed.

(End of provision)

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Part IV

Environmental Protection Agency

43 CFR Parts 268 and 271

Land Disposal Restrictions: National Treatment Variance To Designate New Treatment Subcategories for Radioactively Contaminated Cadmium–, Mercury– and Silver–Containing Batteries; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[FRL–7390–7; Docket Number: RCRA–2002–0027]

RIN 2050–AE99

Land Disposal Restrictions: National Treatment Variance To Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to grant a national treatability variance from the Land Disposal Restrictions (LDR) treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for these wastes in response to a rulemaking petition from the Department of Energy. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate, because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation in accordance with the provisions for treatment standards for hazardous debris is designated as the required treatment prior to land disposal for the new waste subcategories. This will allow safe disposal of these radioactively contaminated materials.

DATES: This rule is effective on November 21, 2002 without further notice, unless EPA receives adverse comment by November 6, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand/delivery/courier. You must send an original and two copies of the comments referencing Docket Number RCRA–2002–0027 to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section I. D. below.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 a.m. to 4 p.m., Eastern Standard Time. For more information on specific aspects of this direct final rule, contact Mr. John Austin at 703–308–0436, *austin.john@epa.gov,* or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those which generate, treat, and dispose radioactive batteries. Regulated categories and entities include:

Category	Radioactively contaminated cadmium-, mercury-, and silver- containing batteries.
Industry	Nuclear waste generators, and treatment and disposal facilities.
Examples of regulated entities.	Envirocare of Utah, Inc.; Nevada Test Site; and the Hanford Nuclear Reservation, Washington.
Federal Agencies	Department of Energy.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Direct Final Action

EPA is publishing this rule without a prior proposal because we view it as a noncontroversial action. We anticipate no adverse comment because of the limited nature of this action. Having said this, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to grant the designation of a new treatment subcategory if adverse comments are filed. This direct final rule will be effective on November 21, 2002 without further notice unless we receive adverse comment by November 6, 2002. If we receive significant adverse comment on this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating that this direct final rule action is being withdrawn due to adverse comment. We will then address all public comments, as appropriate. We will not institute a second comment period on this action. Any parties interested in commenting on this rulemaking must do so at this time.

C. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. RCRA–2002–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002. The EPA/DC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. To review file materials, we recommend that you make an appointment by calling (202) 566–0270. You may copy a maximum of 100 pages from any file maintained at the RCRA Docket at no charge. Additional copies cost $0.15 per page.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials at the EPA/DC.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

D. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. RCRA–2002–0027. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–2002–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the following section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. You must send an original and two copies of the comments referencing Docket Number RCRA–2002–0027 to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002, Attention Docket ID No. RCRA–2002–0027. Deliveries are only

accepted during the Docket's normal hours of operation 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

E. How Should I Submit CBI to the Agency?

Do not submit information electronically that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. RCRA–2002–0027. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

F. 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 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 your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the *D.C. Circuit in Hazardous Waste Treatment Council* vs. *EPA,* 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986), or that it may be inappropriate to require the waste to be treated to the level specified or by the method specified, even though such treatment is technically possible. For such wastes, EPA has a process by which a generator or treater may seek a treatment variance (see 40 CFR 268.44). Treatment variances may be generic (under 40 CFR 268.44(a)) or site-specific (under 40 CFR 268.44(h)). A generic variance can result in the establishment of a new treatability group and a corresponding treatment standard that applies to all wastes that meet the criteria of the new waste treatability group (55 FR 22526, June 1, 1990). A site-specific variance applies only to a specific waste from a specific facility.

On June 13, 2002, the Department of Energy (DOE) petitioned EPA pursuant to 40 CFR 268.44 for a generic treatability variance for mercury-, cadmium-, and silver-containing batteries that are contaminated with radioactive materials. The petition is available in the docket for this rulemaking.

III. Why Are the Existing Standards Inappropriate?

A. What Are the Wastes That Require a Treatment Variance?

Batteries are used in a variety of ways across the DOE complex. For example, nickel-cadmium (NiCd) rechargeable batteries are commonly found in cellular and cordless telephones, 2-way radios, video cameras, portable power tools, laptop computers, and radiological monitoring equipment. Mercury-containing and silver-containing batteries have been widely used in watches, calculators, and cameras. When these batteries reach end of life, they are typically classified as radioactive waste if they were used in a radioactively contaminated area, unless through decontamination and/or radiological surveys they can be cleared for management as non-radiological waste. Sometimes because of cracks, fissures, holes or uneven surfaces in the battery casings, a reasonable confidence level that the batteries are free of radioactive contamination cannot be achieved. In other cases, radioactive contamination is found that cannot be easily removed. In either case, there will always be some batteries that are deemed to be radioactively contaminated.

Based on input from individual facilities, DOE estimates that 2,653 kg of radioactively contaminated waste cadmium-containing batteries, and 247 kg of radioactively contaminated waste mercury-containing batteries are in storage across the complex. No estimate is available for silver-containing batteries. Projected generation rates are 23 kg/yr for radioactively contaminated waste cadmium batteries and 4 kg/yr for radioactively contaminated waste mercury batteries.

The cadmium-containing waste batteries are almost all NiCd batteries, although other types of cadmium-containing waste batteries such as mercury-cadmium and silver-cadmium may be present as well. At a minimum, all of the cadmium-containing waste batteries exhibit the toxicity characteristic for cadmium and carry a D006 hazardous waste code.

Detail on the specific types of mercury-containing waste batteries present is limited, but it is assumed that this waste stream includes both mercury-zinc and mercury-cadmium batteries. At a minimum, these batteries exhibit the toxicity characteristic for mercury and carry a D009 hazardous waste code. Detail on specific types of silver-containing waste batteries is also limited. They may be silver-cadmium or of other composition. At a minimum,

these batteries exhibit the toxicity characteristic for silver and carry a D011 hazardous waste code.

While not representing a large volume of waste, radioactively contaminated cadmium-, mercury-, and silver-containing batteries, which must be managed as mixed waste (*i.e.*, RCRA hazardous and radioactive), present an ongoing waste disposal problem for several sites in the DOE complex. This situation has developed because the existing applicable LDR treatment standards are inappropriate, as explained below. Moreover, neither EPA nor DOE is aware of any commercial metals recovery facility that currently accepts radioactively contaminated cadmium-, or mercury-containing waste batteries for treatment.

B. What Are the New Treatment Standards?

Under existing land disposal restriction (LDR) treatment standards, cadmium-containing waste batteries are classified as D006 Cadmium Containing Batteries Subcategory waste. As such, they are subject to the specified technology of RTHRM (thermal recovery of metals). Most mercury-containing waste batteries are classified as D009 High Mercury-Inorganic Subcategory waste because they are inorganic, exhibit the toxicity characteristic for mercury (under 40 CFR 261.24(b)), and contain greater than 260 ppm total mercury. As such, they are subject to the specified technology of RMERC (roasting/retorting with recovery of mercury). In both cases, the objective of the specified technology is to volatilize the metals in a high temperature treatment unit and subsequently condense and collect them for reuse, while significantly reducing the concentration of metals in the waste residual. This approach is technically inappropriate for radioactively contaminated cadmium- and mercury-containing batteries, because the recovered metals would likely contain residual radioactive contamination. As a consequence, the recovered metals would have an extremely low probability for reuse.

For silver-containing batteries that are D011, the existing LDR treatment standards require treatment to meet numerical constituent concentration levels for silver and any underlying hazardous constituents. Meeting these standards could involve manually segregating the silver-containing batteries from commingled waste batteries before treatment, which could entail increased worker exposure to radiation and result in the generation of larger volumes of radioactively contaminated waste for disposal.

As a result, we intend to grant a national treatment variance by designation of new treatment subcategories for these materials. We believe that the appropriate treatment standard is macroencapsulation in accordance with the design and operating standards of 40 CFR 268.45. Macroencapsulation of debris is defined at 40 CFR 268.45 Table 1 as:

Application of surface coating materials such as polymeric organics (*e.g.*, resins and plastics) or use of a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media.

The design and operating standard requires that the encapsulating material must completely encapsulate the waste and be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (*e.g.*, leachate, other waste, or microbes).

Encapsulation technologies are applicable primarily to wastes containing hazardous metal constituents. Macroencapsulation is the required treatment for D008 radioactive lead solids subcategory wastes and K175 mercury-bearing wastes. Macroencapsulation is also an alternative treatment standard for hazardous debris. We believe that macroencapsulation is appropriate for these radioactively contaminated batteries, because it would require minimal worker handling and reduce the potential for leaching media to contact the batteries following disposal. Thus, macroencapsulation would minimize worker exposure to radioactivity and the potential for release, which we wish to encourage.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. A State may receive authorization by following the approval process described under 40 CFR 271.21. See 40 CFR part 271 for the overall standards and requirements for authorization. EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized State also continues to have independent authority to bring enforcement actions under State law.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized States at the same time that they take effect in unauthorized States. As such, EPA carries out HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also § 271.1(i). Therefore, authorized States are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than existing Federal requirements.

B. Effect on State Authorization

The requirements of today's rule, in EPA's view, are neither more nor less stringent than current regulatory requirements.[1] Therefore, when promulgated, the Agency will add the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. Although States are only required to adopt requirements that are more stringent than the existing provisions, EPA strongly encourages States to adopt the provisions of today's rule.

V. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant

[1] Although today's rule is granted through the 40 CFR 268.44 variance process, the Agency has determined that the new standards are neither more nor less stringent than the current standards. This is because today's rule offers a different technical approach (macoencapsulation) over the current technical approaches of recovery and stabilization.

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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that has fewer than 1000 or 100 employees per firm depending upon the SIC code the firm primarily is classified; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. Costs could increase for entities that are not complying with current requirements, but even these costs, which are not properly attributable to the current rulemaking, would not be expected to result in significant impacts on a substantial number of small entities.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rule does not change in any way the paperwork requirements already applicable to radioactive cadmium-, mercury-, or silver-containing batteries. Therefore, it does not affect requirements under the Paperwork Reduction Act.

D. Unfunded Mandates

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, EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with ''federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that 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, enable 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 Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's rule imposes no enforceable duty on any state, local or tribal government or the private sector. This rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Because we consider today's rule to be neither more nor less stringent than the current regulations, state governments are not required to adopt the proposed changes. The UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program. The UMRA also excludes from the definition of ''Federal private sector mandate'' duties that arise from participation in a voluntary federal program. Therefore, we have determined that today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

E. 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.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because states are not required to adopt the provisions of this rule. Thus, Executive Order 13132 does not apply to this rule.

F. 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 EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in

Executive Order 13175, because it does not preempt tribal law. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health

''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''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 potential effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. When the subject wastes are treated and disposed in accordance with this regulation, the Agency believes that future risks to the human health and the environment will be minimized.

H. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. 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, though OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish new technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994) is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Facilities that would be affected by today's rule include any facility generating hazardous radioactive cadmium, radioactive mercury, or radioactive silver batteries for treatment or disposal. The Agency does not believe that today's rule will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities, because today's rule will facilitate the removal of the subject hazardous wastes from current generation sites for treatment and controlled disposal to ensure protection of human health and the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective 45 days following the publication.

List of Subjects

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. In § 268.40, the Table, ''Treatment Standards for Hazardous Wastes'' is amended by adding entries to the end of entries D006, D009, and D011 to read as follows. The footnotes are republished without change.

§ 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/Regulatory subcategory[1]	Regulated hazardous constituent		Wastewaters: Concentration in mg/L,[3] or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as ''mg/L TCLP'', or technology code.[4]
		Common name	CAS[2] No.		
*	*	*	*	*	*
D006[9]	* * * * * Radioactively contaminated cadmium containing batteries. (**Note:** This subcategory consists of nonwastewaters only)	Cadmium	7440–43–9	NA	Macroencapsulation in accordance with 40 CFR 268.45.
*	*	*	*	*	*
D009[9]	* * * * * Radioactively contaminated mercury containing batteries. **(Note:** This subcategory consists of nonwastewaters only)	Mercury	7439–97–6	NA	Macroencapsulation in accordance with 40 CFR 268.45.
*	*	*	*	*	*
D011[9]	* * * * * Radioactively contaminated silver containing batteries. **(Note:** This subcategory consists of nonwastewaters only)	Silver	7440–22–4	NA	Macroencapsulation in accordance with 40 CFR 268.45.
*	*	*	*	*	*

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units opeated in accordance with the technical requirements of 40 CFR Part 264, Subpart O, or Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * * * *

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well, are not subject to treatment standards. (See § 148.1(d)).

* * * * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

4. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
*	*	*	*
Sept. 30, 2002	Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries.	[Insert **Federal Register** citation page numbers].	November 21, 2002
*	*	*	*

* * * * *

[FR Doc. 02–25414 Filed 10–4–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[FRL–7390–8; Docket Number: RCRA–2002–0027]

RIN 2050–AE99

Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take direct final action to grant a national treatability variance from the Land Disposal Restrictions (LDR) treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for these wastes in response to a rulemaking petition from the Department of Energy. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation in accordance with the provisions for treatment standards for hazardous debris is proposed as the required treatment prior to land disposal.

In the ''Rules and Regulations'' section of the **Federal Register**, we are publishing a direct final rule that would designate a new treatment subcategory for radioactively contaminated cadmium, mercury, and silver-containing batteries without prior proposal because we view this action as noncontroversial and we anticipate no significant adverse comment. We have explained our reasons for this approach in the preamble to the direct final rule. If we receive significant adverse comment on the direct final rule, however, we will withdraw the direct final action and the treatment variance will not take effect. We will not institute a second comment period on this action. Any parties interested in commenting on this proposed variance must do so at this time.

DATES: To make sure EPA considers your comments or suggested revisions to this proposal, they must be postmarked on or before November 6, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand/delivery/courier. You must send an original and two copies of the comments referencing Docket Number RCRA–2002–0027 to: EPA Docket Center (EPA/DC), B102, EPA West, 1301 Constitution Ave. NW, Washington, DC 20460–0002.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 a.m. to 4 p.m., Eastern Standard Time. For more information on specific aspects of this proposed/direct final rule, contact Mr. John Austin at 703–308–0436, *austin.john@epa.gov,* or write him at the Office of Solid Waste, 5302W, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: This document concerns Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

List of Subjects

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 30, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–25415 Filed 10–4–02; 8:45 am]

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To extend the Irish Peace Process Cultural and Training Program. (Oct. 4, 2002; 116 Stat. 1481)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.