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

Rules and Regulations

Federal Register

Vol. 68, No. 3

Monday, January 6, 2003

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ64

Prevailing Rate Systems; Redefinition of the Scranton-Wilkes-Barre, PA, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to redefine Tioga County, Pennsylvania, from the Scranton-Wilkes-Barre, PA, appropriated fund Federal Wage System (FWS) wage area to the Rochester, New York, FWS wage area. This redefinition will better reflect economic trends in the area, which indicate that a linkage exists between Tioga County and the Rochester wage area. The change also will conform more accurately to the regulatory criteria we use to define FWS wage areas.

DATES: Effective Date February 5, 2003. Affected employees will be moved to the wage schedule for the Rochester wage area on the first day of the first applicable pay period beginning on or after the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter at (202) 606–2838; FAX at (202) 606–4264; or e-mail at *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On August 1, 2002, the Office of Personnel Management (OPM) published a proposed rule to redefine Tioga County, Pennsylvania, from the Scranton-Wilkes-Barre, PA, appropriated fund Federal Wage System (FWS) wage area to the Rochester, New York, FWS wage area (67 FR 49878). The proposed rule provided a 30-day period for public comment, during which OPM received no comments.

Tioga County is currently an area of application in the Scranton-Wilkes-Barre wage area. This change to redefine the county to the Rochester wage area is necessary because economic trends indicate more linkage between Tioga County and the Rochester survey area than between Tioga County and the Scranton-Wilkes-Barre survey area.

OPM considers the following regulatory criteria in 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that Tioga County would be more appropriately defined as part of the Rochester wage area. The distance criterion favors the Rochester wage area more than the Scranton-Wilkes-Barre wage area. The commuting patterns criterion favors the Rochester wage area. An additional factor we considered was that Tioga County is adjacent to the Rochester survey area, but not to the Scranton-Wilkes-Barre survey area. This change will affect about 10 Department of the Army employees and 1 Department of the Interior employee.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, recommended this change by consensus. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definitions of the Rochester or Scranton-Wilkes-Barre FWS wage areas.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of New York is amended by revising the listing for Rochester; and for the State of Pennsylvania, by revising the listing for Scranton-Wilkes-Barre, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

Rochester

Survey Area

New York:
Livingston
Monroe
Ontario
Orleans
Steuben
Wayne

Area of Application. Survey Area Plus

New York:
Allegany
Chemung
Genesee
Schuyler
Seneca
Wyoming
Yates
Pennsylvania:
Tioga

* * * * *

Pennsylvania

* * * * *

Scranton–Wilkes–Barre

Survey Area

Pennsylvania:
Lackawanna
Luzerne
Monroe

Area of Application. Survey Area Plus

Pennsylvania:
Bradford
Carbon
Lycoming (Excluding Allenwood Federal Prison Camp)
Pike
Sullivan
Susquehanna
Wayne
Wyoming

* * * * *

[FR Doc. 03–215 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ63

Prevailing Rate Systems; Change in Federal Wage System Survey Job

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will allow the Department of Defense to use the Maintenance Mechanic Federal Wage System (FWS) survey job without having to seek OPM's approval on a case-by-case basis. This change will improve the local FWS wage survey process.

DATES: Effective Date February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Chenty I. Carpenter, (202) 606–2848, FAX: (202) 606–0824, or e-mail *cicarpen@opm.gov*.

SUPPLEMENTARY INFORMATION: On August 1, 2002, the Office of Personnel Management (OPM) issued a proposed rule to permit the Department of Defense (DOD) to use the Maintenance Mechanic Federal Wage System (FWS) survey job on an optional basis without having to seek OPM's advance approval. The Maintenance Mechanic survey job is now used routinely in many FWS wage areas because of changes in the structure of both Federal and private sector maintenance work. The proposed rule provided a 30-day period for public comment, during which OPM received no comments.

OPM's regulations contain required and optional survey jobs. If a particular survey job does not appear on either list, but is needed for a local wage survey, an agency must request OPM's written approval. The Federal Prevailing Rate Advisory Committee (FPRAC) established a Survey Job Work Group (SJWG) to review FWS survey job descriptions. The SJWG recommended that OPM add the Maintenance Mechanic survey job to the list of optional FWS survey jobs. Adding the Maintenance Mechanic survey job to the list of optional survey jobs would enable DOD to use the survey job at its discretion without having to ask OPM for prior approval. This will allow DOD to save time when conducting FWS wage surveys. FPRAC agreed with its working group and recommended that OPM make this change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; ''532.707 also issued under 5 U.S.C. 552.

§ 532.217 [Amended]

2. In §532.217, paragraph (c) is amended by adding the job ''Maintenance Mechanic'' and grade ''10'' after Television Station Mechanic.

[FR Doc. 03–216 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 02–025IF]

RIN 0583–AC93

Food Labeling; Nutrient Content Claims, Definition of the Term: Healthy

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending until January 1, 2006, the effective date for the requirements: That individual meat and poultry products bearing the claim ''healthy'' (or any other derivative of the term ''health'') contain no more than 360 milligrams (mg) of sodium; and that meal-type products bearing the claim ''healthy'' (or any other derivative of the term ''health'') contain no more than 480 mg of sodium.

DATES: Effective date: January 6, 2003.

Comment date: Written comments must be received February 5, 2003.

ADDRESSES: Submit written comments to the FSIS Docket Clerk, Docket #02–025IF, 300 12th Street, SW., Room 102 Cotton Annex Building, Washington, DC 20250–3700. All comments submitted in response to this interim final rule will be made available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy and Program Development, Food Safety and Inspection Service, 300 12th Street, SW., Room 602 Cotton Annex Building, Washington, DC 20250–3700, (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1994, FSIS published a final rule to establish a definition of the term ''healthy'' or any other derivative of the term ''health'' and similar terms on meat and poultry product labeling (59 FR 24220).[1] Under 9 CFR 317.363(b)(3) and 381.463(b)(3), after November 10, 1997, an individual meat or poultry product qualifying to use the term ''healthy'' or any other derivative

[1] Final Rule, Nutrition Labeling; Use of ''Healthy'' and Similar Terms on Meat and Poultry Product Labeling, 59 FR 24220–24229, May 10, 1994. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.access.gpo.gov*.

of that term on its label, or in its labeling, must not contain more than 360 mg of sodium: (a) per reference amount customarily consumed (RACC); (b) per labeled serving size; and (c) per 50 grams (g) for products with reference amounts customarily consumed of 30 g or less or 2 tablespoons or less. Further, under 9 CFR 317.363(b)(3)(i) and 381.463(b)(3)(i), after November 10, 1997, a meal-type product qualifying to use the aforementioned term or any other derivative of the term on its label or in its labeling must not contain more than 480 mg of sodium per labeled serving size.

During the initial 24 months of the requirement's implementation date, which is defined as the time period prior to November 10, 1997, the maximum sodium level for individual meat and poultry products would be allowed to reach 480 mg, and the maximum sodium level for meal-type products would be allowed to reach 600 mg. This time period and its correlating maximum levels are referred to as the ''first-tier sodium level.'' After November 10, 1997, the maximum sodium level for individual meat and poultry products would be decreased to 360 mg, and the maximum sodium level for meal-type products would be decreased to 480 mg. This time period and its correlating maximum levels are referred to as the ''second-tier sodium level.''

Within the same **Federal Register** publication, the Food and Drug Administration (FDA) published a final rule (59 FR 24232) to define the term ''healthy'' under section 403(r) of the Federal, Food, Drug and Cosmetic Act (21 U.S.C. 343(r)).[2] FDA's rule established the same sodium levels associated with the use of the ''healthy'' claim that FSIS' rule established for two separate timeframes. However, the timeframes in FDA's rule differed from those established by FSIS' rule.

On December 17, 1996, ConAgra, Inc., petitioned FSIS to ''eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second-tier levels of 360 mg sodium requirement for individual foods and 480 mg sodium for meal-type products.''[3] In response to the petition, FSIS published an interim final rule on February 13, 1998 (63 FR 7279), which amended §§ 317.363(b)(3) and 381.463(b)(3) by extending the effective date for the second-tier sodium levels (360 mg for individual meat and poultry products and 480 mg for meal-type products) associated with the term ''healthy'' until January 1, 2000.[4] The Agency extended the effective date for the following reasons: (1) To allow time for FSIS to reevaluate the standard, including the data contained in ConAgra's petition and any additional data that the Agency received; (2) to conduct any necessary rulemaking; and finally (3) to allow time for industry to respond to the rule or to any change in the rule that may have resulted from the Agency's reevaluation.

FDA also received a petition from ConAgra, Inc., requesting that the second-tier sodium levels associated with use of the term ''healthy'' be removed from the regulations. In response to this petition, FDA announced a stay of the provisions relating to the lower sodium standards until January 1, 2000 (62 FR 15390).[5]

In its interim final rule, FSIS asked the public for data and comments in regard to the second-tier sodium levels in the ''healthy'' definition and other approaches to reduce the amount of sodium in meat and poultry products labeled ''healthy.'' FSIS received 20 responses to the February 13, 1998, interim final rule, which presented strong and opposing views on whether the Agency should let the second-tier sodium levels take effect, and provided a significant amount of data relating to the use of the term ''healthy.'' Based on the information available, the Agency concluded that, in some cases, the second-tier sodium levels may be overly restrictive, thereby eliminating a term that may potentially assist consumers in maintaining a healthy diet. Accordingly, FSIS published a subsequent interim final rule on December 28, 1999 (64 FR 72490), further extending the second-tier sodium levels' effective date until January 1, 2003.[6] Similarly, FDA published a final rule (64 FR 12886), which extended the stay on their provisions in regard to the lower sodium levels through January 1, 2003, as well.[7]

FSIS received 8 responses to its December 28, 1999, interim final rule. Six responses conveyed support for extending the effective date of the second-tier sodium level until adequate medical and technological research can be conducted to demonstrate that lowering the maximum amount of sodium used to produce these types of products will contribute to or enhance a ''healthy'' diet. The commenters stated that a ''healthy'' diet can not be solely defined or maintained by consuming lower amounts of sodium. Instead, a ''healthy'' diet must rely on maximizing and minimizing a consumer's intake of all nutrients, including sodium, based on the individuality of the consumer. In addition, the commenters stated that lowering the sodium level would affect the products' palatability, which would negatively impact the demand for such products. Further, consumers would be forced to add salt to these products to enhance their taste prior to consumption, which negates the premise of lowering sodium intake as a means of lowering the health risks associated with consuming high levels of sodium. One commenter asserted that establishing a maximum level of sodium contained in meat and poultry products labeled as ''healthy'' does not correlate to the definition of ''healthy'' with respect to positive health benefits. Another commenter stated that the lowest achievable sodium level should be used as the maximum limit when producing individual or meal-type meat and poultry products, and that FSIS should proceed with the intended effective date for the second-tier sodium level requirements.

As of this date, FSIS and FDA are continuing their efforts: (1) To reevaluate appropriate sodium levels associated with the use of the term ''healthy''; and (2) to fully consider all options that preserve the public health

[2] Final Rule, Food Labeling: Nutrient Content Claims, Definition of Term: Healthy, 59 FR 24232–24249, May 10, 1994. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov.*

[3] FSIS Petition #96–08, ConAgra, Inc.; received December 17, 1996. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.fsis.usda.gov/FOIA/popular.htm* as a related document under the Notice, Directives, and **Federal Register** Publications section.

[4] Interim Final Rule, Food Labeling: Nutrient Content Claims, Definition of Term; Healthy, 63 FR 7279–7281, February 13, 1998. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.fsis.usda.gov/FOIA/popular.htm* under the Notices, Directives, and **Federal Register** Publications section.

[5] Final Rule; partial stay, Food Labeling: Nutrient Content Claims, Definition of Term: Healthy, 62 FR 15390–15391, April 1, 1997. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov.*

[6] Interim Final Rule, Food Labeling; Nutrient Content Claims, Definition of Term: Healthy, 64 FR 72490–72491, December 28, 1999. This document may be viewed in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m., or accessed via the World Wide Web at *http://www.fsis.usda.gov/FOIA/popular.htm* under the Notices, Directives, and **Federal Register** Publications section.

[7] Final Rule; extension of partial stay, Food Labeling; Nutrient Content Claims, Definition of Term: Healthy; Extension of Partial Stay, 64 FR 12886, March 16, 1999. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov.*

intent while providing manufacturers with the opportunity to use the term on food labeling consistently with dietary guidelines. Therefore, as the agencies consider whether alternative levels may be more appropriate, it would be contrary to the public interest to require manufacturers to comply with the second-tier sodium levels within the ''healthy'' definition by the current effective date of January 1, 2003. Moreover, FSIS is taking this action so that its labeling regulations remain consistent with those promulgated by FDA. In the **Federal Register** dated May 8, 2002, FDA further extended the partial stay on their provisions to coincide with the aforementioned effective date of January 1, 2006 (67 FR 30795).[8] Accordingly, further extending the second-tier sodium level requirements' effective date for meat and poultry products is warranted.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

This interim final rule is not intended to have retroactive effect.

If this interim final rule is adopted, administrative proceedings will not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this interim final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

[8] Final Rule; extension of partial stay, Food Labeling; Nutrient Content Claims, Definition of Sodium Levels for the Term ''Healthy;'' Extension of Partial Stay, 67 FR 30795, May 8, 2002. This document may be accessed via the World Wide Web at *http://www.access.gpo.gov.*

Executive Order 12866 and the Regulatory Flexibility Act

This interim final rule has been determined to be non-significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

The Administrator has made an initial determination that this interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This interim final rule will impose no new requirements on small entities.

FSIS is initiating this action so that its labeling regulations remain consistent with those promulgated by FDA. Moreover, FSIS needs time to conclude its reevaluation of the impact imposed by further reducing limits on sodium contents of foods labeled as ''healthy'' to determine if the costs of such an action exceed the benefits. The petitioner requesting the extension presented data to support that lowering the sodium content on foods labeled as ''healthy'' could result in fewer ''healthy'' foods being consumed or consumers adding table salt to improve the products' palatability. In addition, the petitioner suggested that lack of available substitutes for sodium would impair the industry's ability to continue manufacturing ''healthy'' foods as currently defined. However, information collected by the Agency continues to support our belief that it is feasible to produce individual meat and poultry products with a sodium level of 360 mg or less at this time.

FSIS will use the time allotted by the extension to initiate the appropriate rulemaking, and respond to its comments. Industry's constituents will be afforded ample time to reformulate their products (a critical consideration since product reformulation may not be a simple task for products such as hot dogs) and modify labeling.

Five commenters to the December 28, 1999, FSIS interim final rule agreed with the petitioner that lowering the sodium level would affect the products' palatability. One commenter posited that establishing a maximum level of sodium contained in meat and poultry products labeled as ''healthy'' does not correlate to the definition of ''healthy'' with respect to positive health benefits. Another commenter supported the implementation of the second-tier sodium level with the intended effective date. The last commenter stated that the health risk focus should not be directed towards sodium, and the effective date should be extended to allow FSIS ''time to conduct a review of the science on this issue to establish the basis for removing altogether any sodium-related disqualification for the term 'healthy'.''

FSIS continues to believe that further health benefits could be achieved by lowering the sodium content of foods labeled as ''healthy''. However, the Agency needs time: (1) To conclude its reevaluation process in conjunction with FDA; and (2) to initiate the appropriate rulemaking. Therefore, as the agencies consider whether alternative levels may be more appropriate it would be contrary to the public interest to require manufacturers to comply with the lower sodium levels in the ''healthy'' definition by the current effective date of January 1, 2003.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedures Act (5 U.S.C. 553) it is the practice of the Administrator to offer interested parties the opportunity to comment on proposed regulations. However, the extended effective date in this interim final rule does not establish any new rules. In addition, this interim final rule must be published in the **Federal Register** prior to January 1, 2003, because that is the current effective date in the regulations. Therefore, the Administrator has determined that publication of a proposed rule is impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, the Administrator waives the 30-day delayed effective date under 5 U.S.C. 553(d).

Paperwork Requirements

There is no paperwork associated with this action.

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.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection, Nutrition.

9 CFR Part 381

Food labeling, Nutrition, Poultry and poultry products.

For the reasons discussed in the preamble, FSIS is amending parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 317.363 [Amended]

2. Section 317.363 is amended by removing the phrase ''through January 1, 2003'' in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with ''through January 1, 2006''.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

§ 381.463 [Amended]

4. Section 381.463 is amended by removing the phrase ''through January 1, 2003'' in paragraph (b)(3) introductory text and (b)(3)(i) and replacing it with ''through January 1, 2006''.

Done at Washington, DC, on: December 30, 2002.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 02–33150 Filed 12–31–02; 3:25 pm]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG74

List of Approved Spent Fuel Storage Casks: Standardized Advanced NUHOMS®–24PT1; Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the Standardized Advanced NUHOMS® System to the list of approved spent fuel storage casks. The Standardized Advanced NUHOMS® System has improved shielding and the ability to withstand a higher seismic spectra than the Standardized NUHOMS® System; otherwise, the cask designs are the same. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

EFFECTIVE DATE: This final rule is effective on February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Jayne McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks,'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs.

Discussion

This rule will add the Standardized Advanced NUHOMS® System (Standardized Advanced NUHOMS®–24PT1) to the list of approved cask designs. Following the procedures specified in 10 CFR 72.230 of subpart L, Transnuclear, Inc., (TN) submitted an application for NRC approval together with the Safety Analysis Report (SAR) entitled, ''Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.'' The NRC evaluated the TN submittal and issued a preliminary Safety Evaluation Report (PSER) and a proposed Certificate of Compliance (CoC) for the Standardized Advanced NUHOMS® System. The NRC published a proposed rule in the **Federal Register** (67 FR 6203; February 11, 2002) to add the Standardized Advanced NUHOMS®–24PT1 cask system to the listing in 10 CFR 72.214. The comment period ended on April 29, 2002. Seven comment letters were received on the proposed rule.

Based on its review and analysis of public comments, the NRC staff has determined that no modifications will be made to the proposed CoC, including its appendices, the Technical Specifications, and the Approved Contents and Design Features, for the Standardized Advanced NUHOMS® System. No modifications will be made to the PSER.

The NRC finds that the Standardized Advanced NUHOMS®–24PT1 cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of part 72. Thus, use of the TN Standardized Advanced NUHOMS®–24PT1 cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the Standardized Advanced NUHOMS®–24PT1 cask system under

the general license in 10 CFR part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on February 5, 2003. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

Summary of Public Comments on the Proposed Rule

The NRC received seven comment letters on the proposed rule. The commenters included a public citizens' petition, two public citizens, two public interest organizations, one environmental justice organization, and one health professional organization. Copies of the public comments are available for review at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. The comments received are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments on the Transnuclear, Inc., Standardized Advanced NUHOMS® System

The proposed listing of the TN Standardized Advanced NUHOMS® System within 10 CFR 72.214, ''List of approved spent fuel storage casks,'' has not been changed as a result of the public comments. A review of the comments and the NRC staff's responses follow:

Comment 1: Several commenters strongly opposed the storage or transportation of spent fuel as proposed by Southern California Edison (SCE) at the San Onofre Nuclear Generating Station (SONGS). These commenters raised a number of site-specific issues relating to the SONGS site and the potential storage of spent fuel at the site. One commenter stated that the development and operation of a ''nuclear dump'' in a highly populated, dangerously seismically active geological region, without a site-specific examination of critical, scientific, technical, economic, and other relevant issues, is unconscionable as an arrogant and indifferent treatment of the local population's welfare and safety in both short- and long-term effects. The site-specific issues raised by the commenters included comments related to costs to ratepayers, exact transportation routes for removal of spent fuel from SONGS, notification of public officials along transportation routes, number of shipments, total population along transportation routes, cost of transportation, training of SONGS employees, creation of jobs at SONGS and in the vicinity, decrease in property values near SONGS, concern over the increased capacity of the spent fuel pool, etc. The comments also included several related to emergency planning at SONGS. One commenter stated that the proposed NUHOMS casks that SCE intends to bring onsite at SONGS were not the safest and most secure casks available on the market and that the NRC must force SCE to use the safest cask design for a site that sits in an earthquake fault zone. The commenters believed that the seismic issue must be addressed and independently reviewed by the United States Geological Survey and the NRC and that the issues should be aired in public forums in Southern California. One commenter made reference to several California laws and actions that California should require SONGS to implement. One commenter stated that all television stations should conduct an emergency broadcast check announcement for SONGS.

Response: The site-specific issues related to SCE potentially using the Standardized Advanced NUHOMS® System are beyond the scope of this rulemaking. Similarly, transportation issues are beyond the scope of this rulemaking. This rulemaking is focused solely on whether to add a particular design, the Standardized Advanced NUHOMS® System, to the list of approved casks. The rulemaking will enable licensees to use this cask system under the general license provisions of 10 CFR part 72. By rulemaking, in § 72.210, the NRC granted a general license to all reactor facilities to operate an independent spent fuel storage installation (ISFSI). For SCE to be able to operate an ISFSI at SONGS under a general license, certain conditions in Part 72 must be met, which include using casks which have been approved by the NRC via rulemaking, and performing written evaluations which establish, among other things, that the reactor site parameters, including analyses of earthquake intensity, are enveloped by the cask design bases.

This rulemaking is the authority for general licensees and not specific licensees. Any licensee who chooses to use this cask under a general license will need to comply with the Technical Specifications (TS) and the Certificate of Compliance (CoC) conditions, such as training of staff. Decisions made by specific utilities on why a specific cask is chosen over another design are beyond the scope of this rulemaking. If SCE chooses to use the Standardized Advanced NUHOMS® System at the San Onofre site, the licensee will be required to perform an evaluation in accordance with § 72.212 to determine whether activities related to storage of spent fuel under the general license would involve any changes, tests, or experiments under § 50.59. In addition, licensees would evaluate programs, such as emergency planning, as a part of their evaluations under § 72.212. In accordance with § 50.59, the licensee would make changes as necessary to existing systems and any physical changes to the facility as necessary to accommodate new cask designs. Each of these changes would need to be evaluated per § 50.59 to determine the impact on other systems and on existing safety analyses.

Comment 2: One of the commenters stated that all meetings regarding high-level waste storage at SONGS or the transportation of irradiated fuel casks off site must be public and be held near the site and that all documents should be made public.

Response: This comment is beyond the scope of this rulemaking. However, it is NRC policy that meetings with licensees be noticed in advance and be open to the public, unless proprietary, safeguards, or other protected information is to be discussed. It is also NRC policy that documents be made public through the Agencywide Document Access and Management System (ADAMS), unless they contain proprietary, safeguards, or other protected information.

Comment 3: One commenter recommended that no transportation be allowed without limitation or phase out of the production of the high-level radioactive waste at SONGS. The commenter further recommended that the NRC, Southern California Counties, and the State of California require SCE to replace and phase out energy that increases production of high-level waste with increased renewable sources and conservation technologies ideally before irradiated fuel pools are full in 2006. The commenter believed that any spent fuel stored at SONGS will never leave the site. One commenter stated that the license for SONGS should not be approved until the health effects of offsite radioactive exposure are included in a risk analysis by the

California Coastal Commission, State of California, or the NRC. The commenter recommended that the Coastal Commission and the State of California research the legality of SCE's proposed storage site at SONGS.

Response: This comment is beyond the scope of this rulemaking. The NRC approval process for a dry cask CoC does not require site-specific actions such as an independent approval or analysis by a State government or entity.

Comment 4: One commenter supported the view that the structure and financing of the Nuclear Waste Fund requires a major overhaul.

Response: This comment is beyond the scope of this rulemaking. The decision to initiate a major overhaul of the Nuclear Waste Fund is a policy matter for the current Administration to consider in conjunction with Congress. The NRC does not oversee the Nuclear Waste Fund.

Comment 5: One commenter stated that the technical analyses, which are required under § 72.212 to demonstrate how proposed casks will be capable of safely storing spent fuel, being monitored, and safely transporting the fuel and how the public health, safety, and welfare will be maintained, must be made public. The commenter stated that withholding these important technical analyses is a serious breach of faith and the rules. Several commenters requested that the public comment period be extended until all of the technical analyses and reports have been made fully and publicly available.

Response: The NRC agrees that all documents that support the approval of the cask design must be made public. The documents referenced in the proposed rule which provide the basis for the rule are publicly available. Documents related to SONGS are not part of and do not support this rulemaking and, therefore, a request for those documents is beyond the scope of this rulemaking. The request to extend the public comment period until all of SCE's § 72.212 technical analyses and reports have been made fully and publicly available is beyond the scope of this rulemaking, since it deals with site-specific issues. The availability of the studies is not relevant to the question on which public comment is invited; *i.e.*, whether this generic cask design should be certified by the NRC. A request for extension of the comment period filed by Ms. Patricia Borchmann was denied by letter dated March 27, 2002, from Dr. Donald A. Cool, Director of the NRC's Division of Industrial and Medical Nuclear Safety.

Comment 6: One commenter stated that the NRC's risk assessment and its methodology needs another look and is outdated. The commenter stated that the probability of an extreme hazard (such as tsunami, earthquake, and terrorist attack) is not as low as the outcome of computer modeling and simulations indicate. The commenter stated that during the entire history of the nuclear industry in the United States, the NRC has been in denial about the real risks of operating nuclear generating stations, especially the sites located in highly populated, seismically active areas, as well as the sites that are in areas that make them totally vulnerable to tsunamis.

Response: The commenter did not specifically identify what NRC risk assessment was of concern, hence this comment is beyond the scope of this rulemaking which is related to the safety review of a storage cask. Risk assessment and methodology development are an evolving process in the NRC. Thus, the risk insights obtained from this process are based on many quantitative and qualitative factors, such as statutory requirements and public and stakeholder interests, before conclusions and recommendations affecting safety are made. Comments about terrorist attacks and seismic conditions are also beyond the scope of this rulemaking. The consideration of seismic conditions at or near a spent fuel storage facility, where a storage cask would be placed, must be addressed by the licensee who uses the casks. Prior to use, each licensee must evaluate the seismic and other site-specific conditions at the site to determine that the design of the cask is suited to the conditions it would be expected to experience during its operational lifetime. This would include seismic loads. The site-specific parameters are delineated in TS 4.4.3.

Comment 7: One commenter strongly believed that dry cask storage raises many troubling public health questions. However, the commenter did not provide any specific examples.

Response: The mission of the NRC is to provide reasonable assurance that the health and safety of the general public will be protected from the dangers involved in the commercial use of radioactive materials. The rulemaking process involves a detailed technical review of the storage cask design to ensure the safety of the cask for storage of spent fuel.

Comment 8: One commenter asked that NRC reconsider the refusal to require or provide a site-specific consideration of this extensive modification of an existing license and its related nuclear facility. The residents of Southern California have a right to formal, legal, and fully adjudicated hearings in any such critical and extensive change at San Onofre.

Response: This comment is beyond the scope of this rulemaking. This rulemaking is focused solely on whether to add a particular design, the Standardized Advanced NUHOMS® System, to the list of approved casks. The rulemaking will enable licensees to use this cask system under the general license provisions of Part 72. The rulemaking does not address site-specific issues related to potential users. This design could be used by any general licensee. By rulemaking, in § 72.210, NRC granted a general license to all reactor facilities to operate an ISFSI without any further site-specific licensing actions.

Comment 9: A commenter raised the question that, while bolting NUHOMS casks to the pad may prevent tipping, what will keep the concrete pad from cracking leading to possible offsite radioactive exposure.

Response: The concrete storage pad is a site-specific design component of a storage facility, which is beyond the scope of this cask design rulemaking. In accordance with § 72.212, the cask operators (licensees) are required to perform written evaluations to ensure that storage pads have been designed to adequately support the storage casks. See TS Section 4.4.3, Item #8, which provides the seismic parameter that would need to be evaluated. The earthquake motions are defined for the top surface of the concrete storage pad. A specific ISFSI site utilizing the cask system must demonstrate that the design seismic condition for that facility does not produce seismic effects greater than those specified for the top of the storage pad. Further, the pads provide a flat, stable surface for resting the storage casks, and any cracks in the pads would have no effect on cask integrity.

Comment 10: One commenter stated that withholding from the public important technical analyses which would demonstrate how proposed casks will be capable of safely storing spent fuel for the entire lifetime that spent fuel will be stored on site, how it will be monitored, how casks can later be safely transported at some time in the distant future, and how the public health, safety, and welfare will be fully maintained is a serious breach of faith and the rules. Another commenter stated that currently casks are licensed (approved) for 20 years, and was concerned that many utilities, including SCE, have stated in their applications that the casks may remain on site for up to 100 years.

Response: Technical documents related to this rulemaking are publicly available for inspection and copying at the NRC Public Document Room and may also be viewed and downloaded electronically via the rulemaking website. In accordance with current NRC regulations, a site may store spent nuclear fuel in a given cask for a period of 20 years. Storage of spent nuclear fuel for a period beyond 20 years is beyond the scope of this rulemaking. TS Section 5.2.5 includes a requirement to monitor the thermal performance of each cask, and Section 5.2.3 includes a requirement to develop a radiological environmental monitoring program.

Comment 11: One commenter asked who at the NRC has approved cranes, other moving equipment, and casks, and what independent verification process was used.

Response: The equipment qualification for lifting and moving heavy loads is addressed in the CoC for the cask design as Condition #5. This item states that a plant-specific safety review (under § 50.59 or § 72.48) is required to show operational compliance with plant-specific heavy load requirements. Each licensee who uses the storage cask is responsible for ensuring that any moving equipment that will be used meets NRC regulatory requirements. The NRC conducts inspections of licensees' loading activities, and such inspections would verify that heavy load issues would be addressed by licensees. The NRC approves cask designs for spent nuclear fuel storage in accordance with the requirements of Part 72.

Comment 12: One commenter asked how the NRC's independent verification process for the proposed NUHOMS casks has changed to address problems that arose with other cask designs. Problems included flammable hydrogen gas bubbles, zinc interactions that can cause an explosion, welding problems, procedure adherence, quality control, cracking, helium leaks, cask loading, flaws in neutron shielding material, faulty O-rings, unloading procedures, and cask deterioration within a few years of installation.

Response: When problems have arisen, the NRC has taken appropriate action to avoid future problems. The NRC staff conducted its independent safety review of the proposed cask design, keeping in mind design issues that have occurred in other cask designs over the past several years. It found no evidence of design-specific characteristics or issues that could lead to repeat of the design concerns raised in this comment.

Comment 13: One commenter stated that the NRC must guarantee the public that the following will not occur if NUHOMS casks are allowed for storage of high-level radioactive waste: (a) Design flaws; (b) vents cut off from air flow due to debris; (c) faulty parts and equipment; (d) cracking; (e) casks approved without NRC's CoC; and (f) exemptions from NRC policies granted to any casks or cask siting, loading, transferring, or transportation procedures.

Response: The NRC takes its responsibility as a regulatory agency very seriously along with its mission to protect the health and safety of the public from dangers associated with the use of radioactive materials. The NRC staff of technical experts has completed a thorough review of the Standardized Advanced NUHOMS® System cask design. As needed, NRC may conduct inspections of vendors and contractors and may witness dry run exercises and the first fuel loading of the cask when it occurs to verify that the design methods were acceptable, that cooling capability will be maintained, and that proper parts have been used in the fabrication process. No casks can be approved without a CoC being issued, and any exemptions from NRC regulations must be justified and approved by the NRC. In addition, any licensee that uses one of these casks in the future must purchase, use, and maintain the casks in accordance with an NRC-approved Quality Assurance (QA) program. A QA program provides checks and balances to ensure that the quality of the casks is addressed during all stages of design, fabrication, use, maintenance, loading, and unloading (if required).

Comment 14: One commenter asked if there is video footage demonstrating an actual fuel removal into NUHOMS casks at any other nuclear facility? If so, where can the public view a copy? If not, the commenter requested that one be required and sent to all communities that will use NUHOMS casks to store high level radioactive waste onsite for 10–100 years, if not permanently.

Response: The commenter's request for such a video is beyond the scope of this rulemaking. There are no NRC regulatory requirements for licensees to use, or submit as part of an application, video footage demonstrating the loading of spent nuclear fuel into a NUHOMS cask.

Comment 15: One commenter believed that all information, including the NRC independent verification of SCE's studies, demonstrating that NUHOMS casks are capable of withstanding a 7.5-magnitude earthquake should be made available to communities within a 50-mile radius of SONGS.

Response: The comment about verification of SCE's studies is a site-specific issue and therefore beyond the scope of this rulemaking. It is NRC policy that documents be made public through ADAMS, unless they contain proprietary, safeguards, or other protected information. In this case, NRC staff completed its review of the seismic capability of the cask design to withstand the forces of an earthquake that produces accelerations in two horizontal directions of 1.5 g and a vertical acceleration of 1.0 g acting simultaneously, as documented in the SER.

Comment 16: One commenter stated that, according to the NRC in 1990, the ''conservative'' approach to financing assumptions would entail no repository until 2025, and onsite dry cask storage in the interim. The commenter questioned what assurances (real tests) do residents near the reactor have that casks will not leak, corrode, or in any way negatively impact safety, as the casks are only certified for 20 years and taking into consideration the NRC quote above. The commenter asked what state-of-the-art testing has been done to assure residents within 50 miles of the ISFSI that NUHOMS casks can withstand earthquakes, faulty welds, corroded welds, fuel leakage, and/or terrorism for 100 years, if not permanently.

Response: The NRC staff completed its review of the seismic capability of the cask design to withstand the forces of an earthquake, and this is documented in the SER. The capability to deal with security threats or terrorism attacks is addressed under Part 73 and is beyond the scope of this rulemaking. Problems with welds and fuel leaking would be addressed by procedures and the QA program of the licensee and implemented during fabrication and loading which is beyond the scope of this rulemaking as well. Dry casks are designed to maintain their confinement integrity for the licensed period; *i.e.*, 20 years. During the life of a cask, the licensee must conduct periodic inspections and maintenance to ensure that the cask design functions remain as specified in the CoC. Storage of spent fuel in this cask design, beyond 20 years, is beyond the scope of this rulemaking. A separate NRC review and approval would be needed for storage beyond the 20-year period.

Comment 17: One commenter asked how damaged fuel assemblies will be handled and what independent verification has the NRC done to assure

that this is the safest method of handling damaged fuel assemblies. The commenter asked where the public can view this independent verification.

Response: NRC Spent Fuel Project Office Interim Staff Guidance—1 (ISG–1) states that spent nuclear fuel with known or suspected cladding defects greater than a hairline crack or a pinhole leak (damaged fuel) should be canned for storage. TS 2.1.a states that damaged fuel assemblies shall be placed in confinement cans. The purpose of canning is to confine gross fuel particles to a known, subcritical volume during off-normal and accident conditions, and to facilitate handling and retrievability. ISG–1 is publicly available on the NRC Web site.

Comment 18: One commenter asked what risk analysis studies the NRC did to assure that high level radioactive waste can be safely transferred to barges, trains, and/or trucks for eventual transportation. The analysis should have included seismic issues regarding an earthquake during transfer of radioactive fuel from pools to casks and from casks to transportation modes. The commenter further stated that if no risk analysis was done, one must be completed before high level radioactive waste is allowed to be transferred from irradiated fuel pools to NUHOMS casks, much less transferred to transportation modes.

Response: Transportation comments are beyond the scope of this Part 72 rulemaking. The NRC has performed a number of transportation risk studies, and currently the Package Performance Study is in progress to study what the effects of impact and fire conditions beyond current regulations would be for a recently approved transportation cask design. The effects of the forces from an earthquake during transfer of radioactive fuel from a spent fuel pool to a storage cask would have to be considered in the procedures and the design of handling equipment in accordance with Part 50 requirements that would be in effect by the licensed utility that would be conducting fuel movement. Dealing with the impact of an earthquake during the movement of casks to a truck or train would be addressed by the requirements of Part 71 which specifies that a number of tests and analyses be performed to determine that the cask can withstand the forces expected to be seen during normal and accident conditions. The forces that a transportation cask can withstand exceed those that would be experienced during an earthquake.

Comment 19: One commenter stated that the NRC has issued a report admitting that irradiated fuel assemblies can still spontaneously combust even after cooling 5 years in pools. The commenter questioned what assurances are there that fuel being transferred into dry casks has been cooled for the minimum 5 years.

Response: The CoC includes TS that state that the fuel that will be loaded in the casks must be cooled a minimum of 10 years. The loading of casks and the records thereof will be subject to NRC inspection for verification that the TS have been met.

Comment 20: One commenter stated that the NRC must demonstrate that the storage casks can be safely opened after loading, if necessary, before allowing the cask to be filled with radioactive waste.

Response: There are no regulatory requirements for a licensee to demonstrate that fuel can be safely unloaded from a cask prior to the actual loading of fuel. The CoC does, however, specify that the licensee conduct a dry run of an unloading operation. That exercise would not be performed with spent nuclear fuel but would be conducted using ''dummy'' assemblies.

Comment 21: One commenter stated that the design basis for the proposed casks must be verifiably certified to withstand a 9/11 style terrorist attack (a minimum of one kiloton) and that the cask should not be approved unless it can withstand a 9/11 type terrorist attack.

Response: This comment is beyond the scope of this rulemaking. The design basis of the casks must address the Part 72 criteria to withstand a number of hypothetical accidents. Currently, there are no regulatory requirements for a storage cask to withstand a 9/11 style terrorist attack. Since 9/11, the NRC has issued advisories to licensees who operate storage facilities to augment certain aspects of their security plans and capability. Further, the NRC has issued orders to impose certain security requirements beyond current regulations on these licensees. In addition, the NRC is conducting a thorough review of its current security regulations and is conducting a vulnerability study for spent fuel storage cask designs to determine what the effects would be from a terrorist attack of a different nature, including the crash of a jumbo jet filled with fuel. After completion of these efforts, the NRC will determine what changes are needed to its security regulations and will make them as appropriate.

Comment 22: One commenter stated that no casks have been tested for their anticipated lifetime on site at nuclear plants.

Response: Spent fuel storage casks are designed to withstand normal and hypothetical accident conditions for their license period of 20 years, in accordance with Part 72 requirements. Licensees must also periodically monitor and inspect casks to verify that safety functions are maintained during operational lifetime. Storage of spent nuclear fuel beyond the 20-year license period is beyond the scope of this rulemaking.

Comment 23: A commenter stated that, in 1984, the NRC issued its waste confidence decision. A summary of the findings includes the temporary storage of spent fuel after cessation of reactor operations and generic determination of no significant environmental impact. The Commission also announced that although it could reach favorable conclusions, it recognized that significant and unexpected events might affect its decision. The commenter stated that it should be obvious to all Americans that the events of 9/11 meet the criteria of ''unexpected events'' to revisit the NRC's Waste Confidence Decision.

Response: This request to revisit the Waste Confidence Decision is beyond the scope of this rulemaking. Since 9/11, the NRC has taken a number of actions that have affected its licensees. Specifically in the area of spent fuel interim storage, the NRC has issued advisories to licensees who operate storage facilities to augment certain aspects of their security plans and capability. Further, the NRC has issued orders to impose certain security requirements beyond current regulations on these licensees. In addition, the NRC is conducting a thorough review of its current security regulations and is conducting a vulnerability study for spent fuel storage cask designs to determine what the effects would be from a terrorist attack of a different nature, including the crash of a jumbo jet filled with fuel. After completion of these efforts, the NRC will determine what changes are needed to its security regulations and will make them as appropriate.

Comment 24: One commenter asked for information about the number of additional personnel necessary to prepare for an ISFSI.

Response: There is no requirement for a particular level of staffing in the CoC. The question raised by the commenter is unclear and lacks specificity as to what is being requested. The NRC believes the comment is beyond the scope of this rulemaking.

Comment 25: One commenter recommended that all training of personnel be reviewed and

independently verified by experts outside the cask designers and the utility.

Response: TS 5.2.2 requires licensees to train and verify the expertise of personnel to maintain and operate the Standardized Advanced NUHOMS® System at nuclear plants. CoC Condition #8 requires that the licensee perform a full dry run of loading and unloading operations prior to first fuel loading of the cask. The NRC conducts independent inspections of dry run activities at ISFSIs.

Comment 26: One commenter asked what agency approves transportation methods.

Response: Transportation issues are beyond the scope of this rulemaking. The NRC is not certain of the commenter's request when it refers to ''transportation methods.'' For the selection of routes, mode of transportation, or physical protection and control of material, the NRC, in conjunction with the Department of Transportation (DOT) and the Department of Energy (DOE), regulates the safe transport of high level radioactive material from beginning to final destination. It is, however, the responsibility of the shipper to choose the mode of transportation along with routes to be used in accordance with applicable regulations and guidance.

Comment 27: One commenter asked for information as to how transportation methods are independently confirmed to be safe. The commenter cited an incident which occurred in late March in which a truck hauling radioactive waste blew over in Wyoming. The incident was supposedly due to high winds. Regarding this incident, the commenter questioned what would happen in an earthquake and if high winds are considered when licenses for transport are granted. The commenter questioned that if this were considered, how did the incident happen. If it were not considered, why wasn't it?

Response: This comment, which deals with transportation issues, is beyond the scope of this rule which is for approval of a storage cask design. The NRC, DOE, and DOT have comprehensive and stringent regulations for the safe transport of high level radioactive waste. These regulations address the packaging that must be used and, in the case of spent nuclear fuel, a package would be a cask that would need to be reviewed and approved for safety considerations by the NRC. Choosing a mode of transportation (rail, truck, or barge) would be made by the shipper, and safety in each mode is addressed by DOT and its independent activities. However, the NRC and DOT rely on the robust design of shipping packages to provide reasonable assurance of safe transportation during routine or accident conditions. The packages protect the contents from damage and release and protect the public from unnecessary exposure to radiation. (*See also* Comment 26.)

Comment 28: One commenter stated that transportation of high level radioactive waste has been postponed several times since 9/11 due to possible terrorist threats. The commenter also stated that one shipment, in the planning stages for years, to ship 125 spent fuel rods on a 2,360-mile journey, was delayed due to 9/11. The casks, unable to be certified in temperatures below 10 degrees Fahrenheit, had to be removed from the train and stored inside for the winter. The commenter stated that the NRC has approved casks for storage and transportation that are unable to hold up to wind and temperature. The commenter questioned how transportation out of their earthquake-prone coastal zone will ever be assured by SCE, by DOE, or by the NRC.

Response: Transportation and site-specific issues are beyond the scope of this rulemaking which deals with the approval of a design for dry storage of spent nuclear fuel. *See* response to Comments 21 and 23, above, for a discussion of security concerns. The NRC has reviewed the cask design capability to withstand forces of wind and temperature during storage as documented in the SER.

Comment 29: One commenter questioned how leaking casks could be unloaded if the spent fuel pool were no longer available after the reactor shut down operations.

Response: A licensee who uses an approved spent fuel cask at its storage facility is responsible for continually monitoring the conditions of each of its casks and the radiation levels around the casks. In addition, it must develop procedures to deal with off-normal events and accidents including dealing with the event of a cask that has lost its confinement capability. In the situation where a plant was decommissioned and no longer had a spent fuel pool available, the licensee would have contingency plans in place to deal with a leaking cask on site. Such a plan would include actions to minimize dose to workers and to the public in accordance with NRC regulations.

Comment 30: The commenter asked if the design basis for the outer cement covering for NUHOMS casks has been approved for transportation.

Response: The Standardized Advanced NUHOMS® System is designed for dry storage of spent nuclear fuel, and not for transportation of spent nuclear fuel. If a component of the Standardized Advanced NUHOMS® System were to be transported, it would need to be approved by the NRC for use in the transportation system being used.

Comment 31: One commenter requested that NRC address the concerns about the risks of operating nuclear generating stations, especially spent fuel pools which will remain totally vulnerable to terrorist attack. Another commenter referenced a September 2000 report by the National Council on Radiation Protection and Measurements dealing with the threat of nuclear terrorism that warned that ''Targeting nuclear spent fuel elements kept in a storage facility would be an easier target than an operating plant.'' A successful attack on such a facility using 1,000 pounds of high explosives could cause radiation contamination over a wide area. This commenter asked what the additional costs and requirements of county, State, and military personnel would be should there be a terrorist attack of vulnerable irradiated fuel pools. The commenter also asked who will bear the additional costs should there be a terrorist attack, especially after termination of operations when irradiated fuel must remain in pools for at least 5 years for cooling.

Response: Comments related to spent fuel pools and security provisions for protection of licensed facilities are beyond the scope of this rulemaking. The NRC reviewed potential issues related to possible radiological sabotage of storage casks at reactor site ISFSIs in the 1990 rulemaking that added Subparts K and L to Part 72 (55 FR 29181; July 18, 1990). NRC regulations in Part 72 establish physical protection requirements for an ISFSI located within the owner-controlled area of a licensed power reactor site. Spent fuel in the ISFSI is required to be protected against radiological sabotage using provisions and requirements as specified in § 72.212(b)(5). Further, specific performance criteria are specified in Part 73. Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans, response plans, and to install systems that provide high assurance against unauthorized activities that could constitute an unreasonable risk to public health and safety.

The physical protection systems at an ISFSI and its associated reactor are similar in design features to ensure the detection and assessment of unauthorized activities. Alarm annunciations at the general license

ISFSI are monitored by the alarm stations at the reactor site. Response to intrusion alarms is required. Each ISFSI is subject to inspection by NRC. The licensee ensures that the physical protection systems are operating within their design limits. It is the ISFSI licensee who is responsible for protecting spent fuel in the casks from sabotage rather than the certificate holder.

Comment 32: One commenter quoting Ray Shadis stated that the public must be informed of all potential radiological consequences, including radioactive dose levels and dose distribution, that would result from massive releases or dispersal of radioactive material.

Response: This comment is beyond the scope of this rulemaking. However, Chapter 10 of the SER documents the staff's review of the cask design to ensure that its use will meet the regulatory dose requirements of Parts 20 and 72.

Comment 33: One commenter asked about the proposed security at the high level radioactive waste site (both reactor and irradiated fuel pools) during operation and after retirement.

Response: This comment is beyond the scope of this rulemaking which is focused solely on whether to place the Standardized Advanced NUHOMS® System on the list of approved casks. *See* response to Comment 31, above.

Comment 34: One commenter asked how SCE and the NRC provide assurance to the public that terrorism cannot occur or cause a radioactive release.

Response: This comment is beyond the scope of this rulemaking. *See* response to Comment 31, above.

Comment 35: One commenter stated that the Holtec and NUHOMS casks (both steel liner and concrete) could be penetrated by 757 and 767 aircraft and that the NRC must address this issue before any permits are granted and questioned how this concern has been addressed by SCE and the NRC.

Response: The NRC considers the comment to be beyond the scope of this rulemaking which is focused solely on whether to place the Standardized Advanced NUHOMS® cask system on the list of approved casks for storage. *See* response to Comment 21, above.

Comment 36: One commenter stated that because the spent fuel pools contain many reactor cores, the amount of radioactive material available for release to the environment and therefore the anticipated consequences, are much greater than for a reactor meltdown, and that ''* * * dispersal of just one portion of one spent fuel assembly by means of high explosives would have radiological consequences much greater than those of a Hiroshima-sized nuclear weapon and would yield near term lethal doses ranging downwind over 60 miles.'' However, emergency response planning, aimed at reactor accidents, has not been adjusted accordingly. The commenter believed that the issues must be addressed in a risk analysis by the NRC.

Response: Comments related to spent fuel pools and security issues are beyond the scope of this rulemaking. *See* response to Comment 31, above.

Comment 37: One commenter stated that the design basis threat must encompass not only a 9/11 air assault, but a ground-based assault for more than 10 people, a truck-bomb assault, or weapons launched from a truck or water craft. The commenter stated that nuclear reactors, adjacent spent fuel storage deposits, nuclear fuel reprocessing facilities, transport vehicles, or any high-level waste site are potential targets for the use of high explosives to disperse into the atmosphere the very high levels of radioactivity associated with materials at these facilities. A successful incursion into a nuclear power reactor would require a very heavily armed force, since commercial reactors are very well protected. The core of a commercial reactor is protected by a containment structure sufficient to prevent atmospheric release even if a large airplane were to crash into the facility. Only when the reactor is being refueled and the containment structure is open would atmospheric dispersion of the reactor's nuclear fuel be likely as a result of the use of high explosives. The commenter stated that targeting spent nuclear fuel elements kept in a storage facility would be an easier target than an operating nuclear plant.

Response: This comment is beyond the scope of this rulemaking. *See* response to Comment 31, above.

Summary of Final Revisions

Based on public comments, no changes from the proposed rule were made to the final CoC for the Standardized Advanced NUHOMS® cask system, nor its appendices, the Technical Specifications, and the Approved Contents and Design Features. In addition, no changes were made to the PSER.

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 final rule, the NRC is adding the TN Standardized Advanced NUHOMS® cask system to the list of NRC-approved cask systems for spent fuel storage in § 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, O–1F23, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection

requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

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

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in § 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in Part 72, Subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rulemaking will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in § 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of 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.

Backfit Analysis

The NRC has determined that the backfit rule (§ 50.109 or § 72.62) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

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. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance (CoC) 1029 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1029.

Initial Certificate Effective Date: February 5, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized Advanced NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1029.

Certificate Expiration Date: February 6, 2023.

Model Number: Standardized Advanced NUHOMS® –24PT1.

Dated at Rockville, Maryland, this 17th day of December, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–155 Filed 1–3–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–53–AD; Amendment 39–12996; AD 2002–26–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This amendment requires replacement of the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob made of non-conductive material. The actions specified by this AD are intended to prevent the knob from conducting electricity, which could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes was published in the **Federal Register** on August 16, 2002 (67 FR 53527). That action proposed to require replacement of the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob made of non-conductive material.

Comments

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

Request To Withdraw Proposed AD or Extend Compliance Time

One commenter asks the FAA to withdraw the proposed AD for the following reasons:

• The proposed AD states that one mechanic received a shock during maintenance, and the commenter notes that it is not likely that the problem exists or will develop in other switches. The commenter operates 74 Model DC–9 series airplanes, and over the past 21 years in service there have been no reported incidents by pilots or mechanics while operating the emergency power switch. The pilots and mechanics have operated the emergency power switches over half a million times.

• Receiving a shock from the power switch does not pose a substantial hazard to the continued airworthiness of the aircraft. The reason for this is that 99 percent of power switch operations are performed while the airplane is parked at the gate, when the pilot performs a pre-flight check, or when a mechanic performs a maintenance service check. If the pilot or mechanic did receive a shock from the power switch, a discrepancy form would be filled out and the switch would be replaced.

The same commenter asks that, as an alternative to withdrawing the proposed AD, the compliance time for replacement of the switch be extended from 6 months to 24 months, using the lead-time of the parts and scheduled maintenance interval criteria, as follows:

• In the proposed AD the FAA estimates that 1,079 airplanes of U.S.-registry are affected. At the time the proposed AD was issued, the manufacturer had no knobs in stock, and 374 on order, with a due date near the end of 2002. There is a 160-day lead time on orders for the power switch knob; therefore, the fleet cannot be outfitted until the knobs are received.

• Because the commenter's C-check is performed at 20-month intervals, it would have less impact on operations if the knobs could be changed during a C-check. This would eliminate special routing of airplanes or special distribution of the knobs. In addition, as stated in Boeing Alert Service Bulletin DC9–24A189 (referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions), the opening of the forward overhead switch panel would not be required, ''based on knowledge of mechanic performing replacement of knob assembly on emergency power switch.'' This would allow one set of mechanics to replace the knobs and would eliminate unnecessary steps.

We partially agree with the commenter, as follows:

• We do not agree to withdraw the proposed AD. As specified in the Discussion section of the proposed AD, ''Investigation revealed that terminals within the switch had shorted to the switch shaft. Due to the design of the emergency power system, this switch is not grounded. The capacity of the emergency power switch knob to conduct electricity, if not corrected, could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel.'' Further, the existing power switch must be replaced with a non-conductive material in order to preclude the possibility of an electrical shock to personnel, which could happen either in flight or before takeoff. The final rule will be issued accordingly.

• We do agree to extend the compliance time somewhat for the replacement of the switch. We have reviewed and approved Boeing Alert Service Bulletin DC9–24A189, Revision 01, dated August 5, 2002, excluding Evaluation Form; and Revision 02, dated October 8, 2002, excluding Evaluation Form; as additional sources of service information for accomplishment of the actions. Revision 02 extends the compliance time recommended in the original issue of the service bulletin from 6 to 12 months, as parts will be available within that timeframe. The changes in Revisions 01 and 02 are not substantive, meaning that airplanes modified per those service bulletins are not subject to any additional work. However, we have changed paragraph (a) of this final rule to refer to Revision 02 of the service bulletin as the appropriate source of service information for the actions in that paragraph. In addition, we have added a new paragraph (b) to the final rule (and reordered subsequent paragraphs accordingly) to give credit for replacements done before the effective date of this AD according to the original issue and Revision 01 of the service bulletin. To follow the compliance time specified in Revision 02 of the service bulletin, we have extended the compliance time for the replacement to within 12 months after the effective date of this AD. Paragraph (a) of this final rule has been changed accordingly.

Request To Extend Compliance Time

Two commenters ask that the compliance time specified in the proposed AD be extended from 6 to 12 months. A third commenter states that, although there are concerns about parts availability, if Boeing can provide an adequate supply of parts to meet the overnight inspection schedule, a compliance time of 6 months can be met. The two commenters note that although Revision 01 of the referenced service bulletin was released on August 5, 2002, to reset the start date of the original issue of the service bulletin, only 300 parts were available at that time. One commenter adds that the FAA is currently reviewing Revision 02 of the service bulletin which extends the compliance time to 12 months to accommodate availability of parts. Both commenters state that the proposed AD should be changed to reflect the latest revision of the service bulletin with the extended compliance time, which allows time for Boeing to produce an adequate number of parts.

As described previously, we have reviewed and approved Revision 02 of the service bulletin and agree to extend the compliance time for the replacement required by this final rule to within 12 months after the effective date of this AD.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

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

Cost Impact

There are approximately 1,904 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $250 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $334,490, or $310 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–08 McDonnell Douglas: Amendment 39–12996. Docket 2002–NM–53–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F,

DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; as listed in Boeing Alert Service Bulletin DC9–24A189, dated December 12, 2001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the emergency power switch knob from conducting electricity, which could result in delivery of an electrical shock and consequent injury to flightcrew or maintenance personnel, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the emergency power switch knob on the overhead switch panel in the flight compartment with a new, improved knob, having part number 4957249–9, made of non-conductive material, according to the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A189, Revision 02, dated October 8, 2002; excluding Evaluation Form.

(b) Replacements done before the effective date of this AD according to Boeing Alert Service Bulletin DC9–24A189, dated December 12, 2001; or Revision 01, dated August 5, 2002; both excluding Evaluation Form, are acceptable for compliance with the replacement required by paragraph (a) of this AD.

Part Installation

(c) As of the effective date of this AD, no person shall install an emergency power switch knob having part number 4957249–1, 4957249–501, or 4957249–503, on the overhead switch panel in the flight compartment of any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) The replacement shall be done in accordance with Boeing Alert Service Bulletin DC9–24A189, Revision 02, dated October 8, 2002, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

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

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–78–AD; Amendment 39–12998; AD 2002–26–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–9–10, –20, –30, –40, and –50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9–10, –20, –30, –40, and –50 series airplanes, that currently requires a one-time visual inspection to determine the modification status of the corners of the forward lower cargo doorjamb; low-frequency eddy current or X-ray inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb; various follow-on repetitive inspections; and modification, if necessary. This amendment retains those requirements but requires certain high-frequency, rather than low-frequency, eddy current inspections for certain conditions. The actions specified by this AD are intended to detect and correct cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form, as listed in the regulations, is approved by the Director of the Federal Register as of February 10, 2003.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996, was approved previously by the Director of the Federal Register as of May 22, 1998 (63 FR 19180, April 17, 1998).

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

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–08–24, amendment 39–10473 (63 FR 19180, April 17, 1998), which is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and Model C–9 (military) airplanes, was published in the **Federal Register** on August 30, 2002 (67 FR 55732). The action proposed to require

a one-time visual inspection to determine the modification status of the corners of the forward lower cargo doorjamb; low-frequency eddy current (LFEC) inspections to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb; various follow-on repetitive inspections; and modification, if necessary. The action also proposed to retain the existing requirements, but require certain high-frequency, rather than low-frequency, eddy current inspections for certain conditions.

Comments

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

Request To Extend Repetitive Inspection Interval

One commenter asks that the repetitive inspection interval specified in paragraph (b)(1)(i)(A) of the proposed AD be extended from 3,500 landings to 3,860 landings. The commenter states that this would permit inspection of affected areas during a scheduled maintenance visit.

The FAA does not agree with the commenter's request. Insufficient supporting data were provided to us to substantiate the request. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, and the practical aspect of accomplishing the required inspections within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. No change to the final rule is necessary in this regard.

Request for Deferral of Upgrade or Replacement of Previously Approved Repairs

The same commenter asks that upgrade or replacement of certain repairs, as specified in paragraph (c) of the proposed AD, be deferred for a period of 24 months, providing the high frequency eddy current (HFEC) inspections find no evidence of cracking. The commenter states that this would pertain to an existing repair or modification that is not in accordance with the published structural repair manual (SRM) or rework drawing specifications, but has been approved for static strength by an original equipment manufacturer or FAA Designated Engineering Representative (DER).

We do not agree with the commenter. We have conducted further analysis of this issue in conjunction with the manufacturer, and we have determined that, for the corners of the forward lower cargo door jamb that have been modified, but not in accordance with the DC–9 SRM or service rework drawing, an initial HFEC inspection of the fuselage skin adjacent to the existing repairs would not detect any cracking under the repairs. The absence of cracking outside a repaired area does not indicate that an acceptable level of safety is being maintained, since possible cracking under the repairs could grow rapidly and extend out from under the repaired area. No change to paragraph (c) of the final rule is necessary in this regard.

Request To Change Certain Language in Preamble

The same commenter states that the proposed AD should explicitly state that the new AD supersedes and cancels the requirements of the existing AD, to avoid a duplicate compliance requirement.

We do not agree with the commenter; the requested language is already in the proposed AD. The Summary section of the proposed AD states, ''This document proposes the supersedure of an existing airworthiness directive * * * The Summary section also specifies that the proposed AD retains the requirements in the existing AD, but requires HFEC rather than low frequency eddy current inspections for certain conditions. No change to the final rule is necessary in this regard.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Explanation of Changes to Final Rule

In the Summary section of the proposed AD, we inadvertently omitted identification of the X-ray inspection to detect cracks, which was required by AD 98–08–24. That inspection was, however, identified in the actions required by the proposed AD. We have changed the Summary section of this AD to include the following phrase: ''* * * low-frequency eddy current or X-ray inspections to detect cracks * * *''

The language in paragraph (f)(3) of the proposed AD has been changed from ''An alternative method of compliance for any inspection or repair * * *'' to ''An alternative method of compliance that provides an acceptable level of safety may be used for any repair * * *'' to clarify that a DER is not permitted to approve an inspection method.

Conclusion

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

Cost Impact

There are approximately 899 airplanes of the affected design in the worldwide fleet. The FAA estimates that 622 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 98–08–24, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $60 per airplane.

Should an operator be required to accomplish an eddy current inspection, it will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of an eddy current inspection required by this AD is estimated to be $60 per airplane.

Should an operator be required to accomplish the modification, it will take approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $936 or $2,807 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification required by this AD is estimated to be $1,776 or $3,647 per airplane.

No change to the parts cost or work hour estimate is anticipated as a result of the new actions included in this AD.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking

actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10473 (63 FR 19180, April 17, 1998), and by adding a new airworthiness directive (AD), amendment 39–12998, to read as follows:

2002–26–10 Boeing: Amendment 39–12998. Docket 2001–NM–78–AD. Supersedes AD 98–08–24, Amendment 39–10473.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; and DC–9–51 airplanes; certificated in any category; as listed in McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form.

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 (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the fuselage skin or doubler at the corner of the forward lower cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: This AD is related to AD 96–13–03, amendment 39–9671; and AD 94–03–01, amendment 39–8807. This AD will affect Principal Structural Element (PSE) 53.09.001 of the DC–9 Supplemental Inspection Document (SID).

One-time Inspection

(a) Prior to the accumulation of 48,000 total landings, or within 3,500 landings after May 22, 1998 (the effective date of AD 98–08–24, amendment 39–10473), whichever occurs later: Perform a one-time general visual inspection to determine if the corners of the forward lower cargo doorjamb have been modified.

Note 4: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Follow-On Actions: Unmodified Doorjamb

(b) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb have not been modified: Before further flight, perform a low-frequency eddy current (LFEC) or X-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward lower cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or Revision 01, dated June 16, 1999, excluding Evaluation Form. After the effective date of this AD, Revision 01 of the service bulletin must be used.

(1) If no cracking is detected during the LFEC or X-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) *Option 1.* Repeat the inspections as follows until the actions specified in paragraph (b)(1)(ii) of this AD are accomplished:

(A) If the immediately preceding inspection was conducted using LFEC techniques, conduct the next inspection within 3,500 landings; or

(B) If the immediately preceding inspection was conducted using X-ray techniques, conduct the next inspection within 2,850 landings.

(ii) *Option 2.* Before further flight, modify the corners of the forward lower cargo doorjamb, in accordance with the service bulletin. Within 28,000 landings after accomplishment of that modification, perform a high-frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(2) If any crack is found during any LFEC or X-ray inspection required by this paragraph and the crack is 2 inches or less in length: Before further flight, modify it in accordance with the service bulletin. Within 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during the HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If any crack is found during any LFEC or X-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Follow-On Actions: Doorjamb Modified per Other Than Structural Repair Manual/ Drawing

(c) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb have been modified, but not in accordance with the DC–9 SRM or Service Rework Drawing: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Follow-On Actions: Doorjamb Modified per SRM/Drawing

(d) If the general visual inspection required by paragraph (a) of this AD reveals that the corners of the forward lower cargo doorjamb have been modified in accordance with the DC–9 SRM or Service Rework Drawing: Within 28,000 landings since accomplishment of that modification, or within 3,500 landings after May 22, 1998, or before the accumulation of 48,000 total landings, whichever occurs latest, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or Revision 01, dated June 16, 1999, excluding Evaluation Form. After the effective date of this AD, Revision 01 of the service bulletin must be used. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(1) If no crack is detected during any HFEC inspection required by this paragraph: Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any HFEC inspection required by this paragraph: Before further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Accomplishment of the actions required by this AD constitutes terminating action for inspections of PSE 53.09.001 (reference McDonnell Douglas Model DC–9 SID) required by AD 96–13–03, amendment 39–9671.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance approved in accordance with AD 98–08–24, amendment 39–10473; AD 94–03–01, amendment 39–8807; or AD 96–13–03, amendment 39–9671; are acceptable for compliance with the applicable requirements of this AD.

(3) An alternative method of compliance that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(h) Unless otherwise provided in this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996; or McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, Revision 01, dated June 16, 1999, excluding Evaluation Form, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–277, dated September 30, 1996, was approved previously by the Director of the Federal Register as of May 22, 1998 (63 FR 19180, April 17, 1998).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on February 10, 2003.

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

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–29 Filed 1–3–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–85–AD; Amendment 39–13003; AD 2002–26–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to detect evidence of wear damage in the area at the interface between the vertical stabilizer and fuselage skin, and corrective actions, if necessary. This amendment also provides for an optional terminating action for the repetitive inspections. The actions specified by this AD are intended to detect and correct wear damage of the fuselage skin, which could result in thinning and cracking of the fuselage skin, and consequent in-flight depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

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

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on May 30, 2002 (67 FR 37734). That action proposed to require repetitive inspections to detect evidence of wear damage in the area at the interface between the vertical stabilizer and fuselage skin, and corrective actions, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspections.

Comments

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

Request To Change Cost Impact

One commenter states that the work hours cited in the cost impact section of the proposed AD are significantly understated. The commenter notes that the hours for access and restoration have been omitted from the cost figures, so the true cost impact is not specified. The commenter states that access and restoration tasks do not routinely occur during scheduled maintenance visits in this instance. The commenter adds that 18 hours are necessary to gain access, perform the inspection and terminating action, and restore the airplane. The commenter asks that the cost impact section be changed to 18 hours for these actions.

The FAA agrees that access to the area under the vertical seal is not a task normally accomplished during routine maintenance, and the work hours required for access and closeup should be added. We have changed the work hours for the inspection specified in the cost impact section to 12 work hours; the optional terminating action will remain at 6 work hours, as it can be done immediately following the inspection, before closeup.

Request To Change Limits for Allowable Wear Damage

One commenter states that the definition for the limits for allowable skin damage as specified in the structural repair manual (SRM) was recently revised, and the damage limits have been reduced. The commenter adds that Section 3 of the referenced service bulletin specifies these new allowable damage limits in the Accomplishment Instructions. The commenter asks that the proposed AD be changed to refer to the service bulletin or list the revision date of the appropriate SRM to assure operators use the new limits for allowable damage.

We do not agree with the commenter. Operators should use the new allowable damage limits cited in the service bulletin or they may not be evaluating existing blendouts against the proper limits. However, we have determined that evaluation of existing blendouts against the old damage limits will not compromise an acceptable level of safety. Regarding new repairs, paragraph (a)(2) of the proposed AD requires that operators repair and refinish the skin per the service bulletin. In order to comply with this requirement, operators must use the allowable limits specified in the service bulletin. No change to the final rule is necessary in this regard.

Request Credit for Previous Inspections and Terminating Action

One commenter asks that credit be given for the inspections and terminating action required by the proposed AD, if done before the effective date of the proposed AD per Boeing Service Bulletin 747–53–2192, dated July 21, 1981. The commenter states that the service bulletin referenced in the proposed AD includes a provision that specifies such credit.

We agree that credit can be given under certain explicit conditions. Service Bulletin 747–53–2192 specifies that, for airplanes having line numbers 0001 through 0414 inclusive, there is an option of using enamel coating or BMS 10–86 Teflon-filled coating. If operators can confirm that BMS 10–86 Teflon-filled coating was used, and the new allowable damage limits specified in Boeing Alert Service Bulletin 747–53A2478 (referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions specified) are met, then no more work is necessary. A new paragraph (c) has been added to this final rule to provide credit if the conditions are met.

Request Credit for Inspections Done per Certain Maintenance Procedures

One commenter states that the Boeing Model 747 Maintenance Planning Document (MPD) recommends inspections of the affected areas of the fuselage skin at no greater than ''D'' check intervals. The commenter adds that the Corrosion Prevention and Control Program (CPCP) recommends inspections of the exterior surface of the fuselage skin for corrosion and other discrepancies at 5-year intervals. Based on these requirements, the commenter does the inspections required by the proposed AD earlier than the 6,000-flight-cycle compliance time specified for the repetitive inspections. The commenter also adds that, since the existing inspection programs already require inspections more frequently, there is no additional safety to be gained from promulgation of the proposed AD. The commenter asks that credit be given for the repetitive inspections required by paragraph (a)(1) of the proposed AD if done as part of these maintenance programs.

Based on operator reports of wear damage of the fuselage skin at the interface area of the vertical stabilizer seal and fuselage skin, we do not agree with the commenter that existing maintenance programs are providing acceptable levels of safety. Additionally, this area is not accessed by all operators during scheduled maintenance visits, as specified previously under ''Request to Change Cost Impact,'' so no change to the final rule is necessary in this regard. However, under the provisions of paragraph (d) of the final rule, we may approve requests for alternate inspections if data are submitted to substantiate that the inspections are equivalent and that repairs and any existing wear meet the allowable damage limits specified in the referenced service bulletin.

Request To Change Paragraphs (a)(2) and (b)

One commenter states that paragraph (b) of the proposed AD allows refinishing of the fuselage skin with BMS 10–86 Teflon-filled coating as terminating action for the proposed inspections. The commenter notes that there are other Teflon-filled coatings that are equivalent or better than BMS 10–86, and operators may already be using these ''equivalent'' coatings in their paint specifications. The commenter asks that, if the proposed AD is deemed necessary, paragraphs (a)(2) and (b) be changed to allow the use of other Teflon-filled coatings with equivalent abrasion resistant properties.

We do not agree with the commenter's request, as no supporting data were provided to us to substantiate the request. However, under the provisions of paragraph (d) of the final rule, we may approve requests for the use of other Teflon-filled coatings if data are submitted to substantiate that such coatings would provide an acceptable level of safety.

Request To Reconsider Terminating Action

One commenter states that paragraphs (a)(2) and (b) of the proposed AD allow the one-time application of Teflon-filled paint coating as terminating action for the repetitive inspections required by paragraph (a)(1) of the proposed AD. The commenter states that the proposed AD seems to indicate that the external paint will never again be removed and replaced, but is reapplied on an irregular basis. The commenter adds that, if this problem is as serious as alleged, a one-time application of a Teflon-filled paint coating to the exterior of the airplane would not provide a realistic terminating action. The paint will have to be reapplied whenever the external paint is stripped and refinished.

We do not agree with the commenter. If the external paint is stripped, refinishing the skin with BMS 10–86 Teflon-filled coating is required to remain in compliance with paragraph (a)(2) of this AD. Therefore, no change

to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 1,104 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 253 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane (including time required to gain access and to close up) to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $182,160, or $720 per airplane, per inspection cycle.

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.

Should an operator elect to accomplish the proposed optional terminating action per paragraph (b) of this AD, it would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional termination action would be $360 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–15 Boeing: Amendment 39–13003. Docket 2002–NM–85–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct wear damage of the fuselage skin in the area at the interface between the vertical stabilizer and fuselage skin, which could result in thinning and cracking of the fuselage skin, and consequent in-flight depressurization of the airplane, accomplish the following:

Inspections for Damage/Corrective Actions

(a) Prior to the accumulation of 15,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed inspection to detect evidence of wear damage of the fuselage skin at the interface area of the vertical stabilizer seal and fuselage skin, per Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002.

(1) If no wear damage of the fuselage skin is detected or any existing blendout is within the structural repair manual (SRM) allowable damage limits: Repeat the detailed inspection at intervals not to exceed 6,000 flight cycles.

(2) If any wear damage of the fuselage skin is detected or any existing blendout exceeds the allowable damage limits specified in the SRM: Before further flight, repair the vertical stabilizer seal interface and refinish the skin with BMS 10–86 Teflon-filled coating, per the alert service bulletin. Accomplishment of the repair and refinishing is terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

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

Optional Terminating Action

(b) Refinishing the fuselage skin with BMS 10–86 Teflon-filled coating, per Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002, terminates the repetitive inspections required by paragraph (a)(1) of this AD.

Previously Accomplished Inspections and Terminating Action

(c) Inspections and terminating action done before the effective date of this AD per Boeing Service Bulletin 747–53–2192, dated July 21, 1981, are acceptable for compliance with the corresponding actions required by this AD, provided BMS 10–86 Teflon-filled coating was used, and the new allowable damage limits specified in Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002, are met.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–53A2478, dated February 7, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

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

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–26 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–402–AD; Amendment 39–12997; AD 2002–26–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes with stowage bins installed forward of door 2 at Station 680. This AD requires a one-time inspection to determine if a certain intercostal is installed for support of the overhead stowage bin(s) at Station 680, and follow-on actions, if necessary. This action is necessary to prevent failure of the stowage bin attachment fitting at Station 680, which could result in the overhead stowage bin falling onto the passenger seats below and injuring passengers or impeding the evacuation of passengers in an emergency. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

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

FOR FURTHER INFORMATION CONTACT: David Crotty, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1675; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes with stowage bins installed forward of door 2 at Station 680 was published in the **Federal Register** on May 15, 2002 (67 FR 34639). That action proposed to require a one-time inspection to determine if a certain intercostal is installed for support of the overhead stowage bin(s) at Station 680, and follow-on actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter states that it offers no comments because it does not operate any affected airplanes.

Extend Compliance Time for Installation of Intercostal(s)

Several commenters request that the FAA extend the compliance time for installation of the intercostal(s), if necessary, from 24 months to 60 months after the effective date of the AD. The commenters point out that the time required to gain access for installing the intercostal(s) is significant (the commenters estimate 65 work hours is needed to gain access, install, and close up), and the proposed 24-month compliance time would not allow most operators to accomplish the proposed actions during a heavy maintenance visit. The commenters also state that, based on preliminary inspections, a significant portion of the airplane fleet may be without the subject intercostal. To ensure that an acceptable level of safety is maintained if the compliance time is extended to 60 months, the commenters recommend accomplishment of repetitive inspections for cracking every 18 months.

The FAA concurs that extending the compliance time for the installation of the intercostal(s) is an acceptable alternative to requiring installation of the intercostal(s) within 24 months after the effective date of this AD, provided that repetitive inspections for cracking are performed until the intercostal is installed. Therefore, we have revised paragraph (b) in this final rule to add subparagraphs (b)(1) and (b)(2), which specify the compliance alternatives.

Reduce Compliance Time for One-Time Inspection

The same commenters who request extension of the compliance time for installing the intercostal also request that we reduce the compliance time from 24 months to 12 months for the one-time inspection to determine if the subject intercostal is installed. One of the commenters explains that reducing the compliance time in this way would ensure that any structural damage is found and fixed in a timely manner.

We do not concur with the request to reduce the compliance time for the one-time inspection. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the inspection. In light of all of these factors, we find a 24-month compliance time for completing the required inspection to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change is necessary in this regard.

Request To Allow Stop-Drilling of Cracks

Two commenters request that we revise paragraph (c) of the proposed AD to allow stop-drilling of any crack that is found, instead of requiring repair before further flight. The commenters state that, following stop-drilling of the crack, the affected overhead stowage bin could be blocked out until an interim repair is installed within 90 days. The commenters state no justification for

this request, but one commenter notes that the stowage bins at Station 680 on its airplanes are above a galley, so no passenger sits under the subject stowage bins.

We do not concur with the commenters' request. The commenters provide no data to substantiate that their request would provide an acceptable level of safety. However, an affected operator may request approval of an alternative method of compliance as provided by paragraph (d) of this AD. We may consider approving such an alternative method of compliance if data are submitted to support that an alternative repair method would provide an acceptable level of safety. No change is necessary in this regard.

Request To Issue Supplemental NPRM

The commenters who request extension of the compliance time for installation of the intercostal, reduction of the compliance time for the initial inspection, and inclusion of a provision for stop-drilling cracks, recommend that we issue a supplemental NPRM, supported by a revised service bulletin.

We do not concur with the commenters' request. Under the provisions of the Administrative Procedure Act, we issue a supplemental NPRM and reopen the period for public comment when we determine that a change to a proposed AD will either increase the economic burden on an operator or increase the scope of the proposed AD. The change that we are making to this AD—extension of the compliance time for installing the intercostal—does not increase the economic burden on any operator nor does it expand the scope of the proposed AD. Also, the airplane manufacturer has not issued a revised service bulletin. For these reasons, as well as the potentially adverse effect on safety that delaying issuance of this final rule may cause, we find it unnecessary to issue a supplemental NPRM. Thus, no change has been made in this regard.

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 change previously described. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 403 Model 757–200 series airplanes of the affected design in the worldwide fleet. We estimate that 219 airplanes of U.S. registry will be affected by this AD.

The required inspection will take up to 2 work hours per airplane (1 work hour per side of the airplane), at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be up to $26,280, or $120 per airplane.

Should an operator be required to do the installation, it will take up to 2 work hours per airplane (1 work hour per side of the airplane), at the average labor rate of $60 per work hour. Required parts will cost approximately $1,310 per airplane. Based on these figures, the cost impact of this installation is estimated to be $1,430 per airplane.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulation (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:

2002–26–09 Boeing: Amendment 39–12997. Docket 2000–NM–402–AD.

Applicability: Model 757–200 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 757–25–0194, dated February 11, 1999, and having stowage bins installed forward of door 2 at Station 680.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the stowage bin attachment fitting at Station 680, which could result in the overhead stowage bin falling onto the passenger seats below and injuring passengers or impeding the evacuation of passengers in an emergency, accomplish the following:

One-Time Inspection

(a) Within 24 months after the effective date of this AD, do a one-time general visual inspection to determine if an intercostal is installed between stringers 8 and 9 for support of the overhead stowage bin at Station 680, on the left and right sides of the airplane, as applicable, according to Boeing Service Bulletin 757–25–0194, dated February 11, 1999. If an intercostal is installed on each side that has an overhead stowage bin at Station 680, no further action is necessary.

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

Follow-On Actions

(b) For each side of the airplane that has an overhead stowage bin at Station 680 but no intercostal installed: Before further flight after the inspection required by paragraph (a) of this AD, do a detailed inspection for cracking or damage of stringer 8 and the tie rod mounting assembly according to Boeing Service Bulletin 757–25–0194, dated February 11, 1999. Then, do either paragraph (b)(1) or (b)(2) of this AD.

Note 3: For the purpose of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Repeat the detailed inspection for cracking or damage of stringer 8 and the tie rod mounting assembly every 18 months, and within 60 months after the effective date of this AD, do paragraph (b)(2) of this AD.

(2) Before further flight, install a new intercostal between stringers 8 and 9, according to the service bulletin. This installation terminates the repetitive inspections specified in paragraph (b)(1) of this AD.

Repair of Cracking or Damage

(c) If any cracking or damage is found during any detailed inspection required by paragraph (b) of this AD: Before further flight, and before installation of the intercostal, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

Note 4: 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

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 757–25–1094, dated February 11, 1999, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained form Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

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

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–44–AD; Amendment 39–13006; AD 2002–26–18]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, that requires replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies. The actions specified by this AD are intended to prevent fluid contamination inside the fueling float switch or chafing of the wiring to the in-tank conduit, which could generate an ignition source and consequent fire and explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

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

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1446; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes was published in the **Federal Register** on August 20, 2002 (67 FR 53893). That action proposed to require replacement of the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies.

Comments

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

Request To Add Revised Service Information

One commenter, the manufacturer, asks that Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002, be added to the proposed AD as another source of service information for accomplishment of the specified actions. Boeing Alert Service Bulletin 737–28A1142, dated February 7, 2002, was referenced in the proposed AD as the appropriate source of service information for accomplishment of the actions.

The FAA agrees with the commenter. We have reviewed and approved Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002.

We find that the changes incorporated in Revision 2 of the service bulletin are not substantive, meaning that airplanes modified per the original issue of the service bulletin are not subject to any additional work under Revision 2 of the service bulletin. Therefore, we have revised paragraph (a) of this final rule to refer to Revision 2 of the service bulletin as the appropriate source of service information for the actions in that paragraph. In addition, we have added a new paragraph (b) to this final rule (and reordered subsequent paragraphs accordingly) to give credit for replacements accomplished before the effective date of this AD according to the original issue of the service bulletin.

Request To Change Number of Airplanes Affected

The same commenter asks that the number of affected airplanes that is specified in the Cost Impact section of the proposed AD be changed. The commenter provided supporting data which confirms that the number of airplanes in the worldwide fleet is 927, and the number of U.S.-registered airplanes is 421.

We agree with the commenter, as we inadvertently specified the incorrect numbers of affected airplanes in the proposed AD. We have changed the Cost Impact section in this final rule to reflect the correct numbers of airplanes.

Request To Change Work Hours

One commenter states that the man hours specified in the Cost Impact section of the proposed AD are conservative, and notes that the actual man hours will be higher and will increase the out-of-service time for its airplanes.

Although the commenter does not request a change, we infer that the commenter would like the number of work hours specified in the Cost Impact section to be increased.

We do not agree to change the work hours for the replacements. The number of work hours necessary to accomplish the replacements, as specified in the Cost Impact section, is consistent with the service bulletin. The number represents the time necessary to perform only the replacements actually required by this AD. We recognize that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. Therefore, no change is made to the final rule in this regard.

Explanation of Change to Final Rule

We have changed the compliance time terminology specified in paragraphs (a)(1), (a)(2), and (a)(3) of the proposed AD from flight cycles to flight hours in the final rule. We inadvertently used the term ''flight cycles,'' in the proposed AD; however, the referenced service bulletin specifies ''flight hours,'' and the proposed AD also should have specified ''flight hours.''

Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We 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 927 airplanes of the affected design in the worldwide fleet. The FAA estimates that 421 airplane of U.S. registry will be affected by this AD.

It will take approximately 56 work hours per airplane to accomplish the replacement in the two main fuel tanks, as specified in Work Page I, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the work hours for this required replacement on U.S. operators is estimated to be $1,414,560, or $3,360 per airplane.

It will take approximately 23 work hours per airplane to accomplish the replacement in the center fuel tank, as specified in Work Package II, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the work hours per this required replacement on U.S. operators is estimated to be $580,980, or $1,380 per airplane.

The kit required to accomplish the replacement in all three fuel tanks will cost approximately $5,116 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–18 Boeing: Amendment 39–13006. Docket 2002–NM–44–AD.

Applicability: Model 737–600, -700, -700C, -800, and -900 series airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002.

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

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fluid contamination inside the fueling float switch or changing of the wiring to the in-tank conduit, which could generate an ignition source and consequent fire and explosion in the fuel tank, accomplish the following:

Replacement

(a) Replace the existing fueling float switch and conduit assemblies in the main and center fuel tanks with new, improved assemblies (includes a new float switch and a new conduit assembly with a liner system inside the conduit), at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, per Work Packages I and II of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002.

Note 2: Due to the lack of sleeving on the existing electrical wire installations of the center fuel tank, it is recommended that Work Package II be completed before Work Package I.

(1) For airplanes that have accumulated fewer than 5,000 total flight hours as of the effective date of this AD: Within 2 years after the effective date of this AD.

(2) For airplanes that have accumulated 5,000 total flight hours or more, but fewer than 10,000 total flight hours as of the effective date of this AD: Within 1 year after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 total flight hours or more as of the effective date of this AD: Within 180 days after the effective date of this AD.

(b) Replacements done before the effective date of this AD per Boeing Alert Service Bulletin 737–28A1142, dated February 7, 2002, are considered acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airport Directorate. 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

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the replacement shall be done in accordance with Boeing Alert Service Bulletin 737–28A1142, Revision 2, dated November 26, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on February 10, 2003.

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

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–290–AD; Amendment 39–13004; AD 2002–26–16]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires measurement of the over-center force of the thrust reverser operating levers, a functional test of the secondary lock solenoid of the thrust reversers, and corrective actions if necessary. The actions specified by this AD are intended to detect and correct an insufficient over-center force in the corresponding thrust reverser operating lever, and incorrect setting of the thrust reverser selector switch (S9), which could result in uncommanded deployment of the thrust reversers during flight and consequent reduced controllability of the airplane. This AD is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on April 5, 2002 (67 FR 16333). That action proposed to require measurement of the over-center force of the thrust reverser operating levers; a functional test to verify proper energizing of the secondary lock solenoid of the thrust reversers; and corrective actions, if necessary.

Explanation of Relevant Service Information

In the proposed AD, the FAA identified Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, as the appropriate source of service information for the proposed requirements. Since the proposed AD was issued, Fokker issued Service Bulletin Change Notification (SBCN) SBF100–76–015/01, dated May 1, 2001, and Manual Change Notification—Maintenance Documentation (MCNM) F100–060, Revision 1, dated March 19, 2001. The revised MCNM provides wording that is consistent with the existing maintenance manual wording to clarify the procedures; the procedures otherwise remain unchanged. The SBCN advises that the MCNM changes have been incorporated into the service bulletin.

Comments

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

Support for the Proposed AD

One commenter fully supports the proposed AD.

Request To Cite Revised Service Documents

The manufacturer requests that the proposed AD be revised to cite the most recent versions of the relevant service documents.

Based on a review of the document revisions, the FAA concurs with the request. Paragraphs (a) and (b) of this AD have been revised accordingly.

Request To Clarify Certain Requirements

The manufacturer requests that paragraph (b) of the proposed AD be revised for several reasons. First, the proposed language suggests that the functional test is intended to verify proper energizing of the secondary lock solenoid, whereas the solenoids are not supposed to energize during the test. Second, the reference to movement of the ''thrust reverser operating lever'' in paragraphs (b)(1), (b)(2), (b)(2)(i), and (b)(2)(ii) of the proposed AD suggests that the thrust reverser operating levers are operated during the functional test. The manufacturer advises that the thrust levers, not the thrust reverser operating levers, are operated during the functional test. Third, the manufacturer suggests that paragraph (b)(2) of the proposed AD, which would require operators to repeat the functional test ''one more time,'' could be misinterpreted. The service bulletin provides instructions to perform the functional test at least five times before, and (if necessary) after, a rigging check of the thrust lever switchbox. The functional test involves ''slamming'' the thrust levers with the thrust reverser operating levers in the stowed position. The commenter suggests a reader could infer that a single ''slam'' is sufficient.

The FAA agrees with the requests for the reasons provided by the commenter and has made the following changes in this final rule: First, the phrase ''to verify proper energizing'' has been removed from the summary and paragraphs (b) and (b)(2) of this AD. Second, the phrase ''movement of thrust reverser operating levers'' has been changed to ''movement of the thrust levers'' in paragraphs (b)(1), (b)(2), (b)(2)(i), and (b)(2)(ii). Third, the phrase ''one more time'' has been removed from paragraph (b)(2).

Conclusion

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

Cost Impact

The FAA estimates that 139 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,680, or $120 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, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–16 Fokker Services B.V.: Amendment 39–13004. Docket 2001–NM–290–AD.

Applicability: All Model F.28 Mark 0070 and 0100 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct an insufficient over-center force in the corresponding thrust reverser operating lever, and incorrect setting of the thrust reverser selector switch (S9), which could result in uncommanded deployment of the thrust reversers during flight and consequent reduced controllability of the airplane, accomplish the following:

Over-Center Force Measurement and Readjustment

(a) Within 6 months after the effective date of this AD, measure the over-center force of the left- and right-hand thrust reverser operating levers, per paragraph 2.A. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including Service Bulletin Change Notification (SBCN) SBF100–76–015/01, dated May 1, 2001, and Manual Change Notification—Maintenance Document

(MCNM) F100–060, Revision 1, dated March 19, 2001.

(1) If the over-center force is equal to or higher than 4.5 pounds, but not higher than 5.5 pounds, no further action is required by this paragraph.

(2) If the over-center force is less than 4.5 pounds or higher than 5.5 pounds, before further flight, readjust the over-center force and accomplish the corrective actions (including measuring and readjusting the minimum stop of the reverse-thrust lever and over-center force of the thrust reverser), per the service bulletin.

Functional Test and Corrective Actions

(b) Within 6 months after the effective date of this AD, perform a functional test of the secondary lock solenoid of the left- and right-hand thrust levers, per paragraph 2.B. of the Accomplishment Instructions of Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including SBCN SBF100–76–015/01, dated May 1, 2001, and MCNM F100–060, Revision 1, dated March 19, 2001.

(1) If the secondary lock solenoid does NOT (momentarily or continuously) energize with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, no further action is required by this paragraph.

(2) If the secondary lock solenoid (momentarily or continuously) energizes with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, before further flight, perform a rigging check of the thrust reverser switchbox and repeat the functional test of the secondary lock solenoid, per paragraph 2.B.(9) of the service bulletin.

(i) If the solenoid does NOT (momentarily or continuously) energize with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, no further action is required by this paragraph.

(ii) If the secondary lock solenoid still (momentarily or continuously) energizes with movement of the thrust levers as described in paragraph 2.B.(9) of the service bulletin, before further flight, replace the thrust reverser switchbox with a new or serviceable switchbox, per the service bulletin.

Credit for Accomplishment per Prior Version of Service Information

(c) Accomplishment, before the effective date of this AD, of the actions specified in paragraphs (a) and (b) of this AD in accordance with Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including MCNM F100–060, dated January 1, 2001, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–76–015, dated January 15, 2001, including Service Bulletin Change Notification SBF100–76–015/01, dated May 1, 2001, and Manual Change Notification MCNM F100–060, Revision 1, dated March 19, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 2001–040, dated March 30, 2001.

Effective Date

(g) This amendment becomes effective on February 10, 2003.

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

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–16 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–104–AD; Amendment 39–13007; AD 2002–26–19]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes, that requires replacing the main pitot static tube on each side of the airplane with a new improved pitot static tube, and installing a gasket between the tube and the airplane structure. The actions specified by this AD are intended to prevent ice from blocking the pitot system, due to the pitot tube not having enough heating capacity to stay above freezing temperature, which could result in erroneous airspeed indications. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Saab Model SAAB 2000, SAAB SF340A, and SAAB 340B series airplanes was published in the **Federal Register** on July 19, 2002 (67 FR 47491). That action proposed to require replacing the main pitot static tube on each side of the airplane with a new improved pitot static tube, and installing a gasket between the tube and the airplane structure.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 312 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $13,400 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,330,560, or $13,880 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–19 Saab Aircraft AB: Amendment 39–13007. Docket 2002–NM–104–AD.

Applicability: All Model SAAB 2000, SAAB SF340A, and SAAB 340B 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from blocking the pitot system, due to the pitot tube not having enough heating capacity to stay above freezing temperature, which could result in erroneous airspeed indications, accomplish the following:

Replacement

(a) Within 12 months from the effective date of this AD, replace the main pitot static tube on each side of the airplane with a new improved pitot static tube, and install a gasket between the tube and the airplane structure; per the Accomplishment Instructions of Saab Service Bulletin 340–34–145 (for Model SF340A and 340B series airplanes); or Saab Service Bulletin 2000–34–060 (for Model 2000 series airplanes); both dated October 1, 2001; as applicable.

Part Installation

(b) As of the effective date of this AD, no person shall install any static pitot tube having part number 856ML1 or 856ML2, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The replacement and installation shall be done in accordance with Saab Service Bulletin 340–34–145, dated October 1, 2001; or Saab Service Bulletin 2000–34–060, dated October 1, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Swedish airworthiness directives 1–166 and 1–167, both dated October 1, 2001.

Effective Date

(f) This amendment becomes effective on February 10, 2003.

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

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–15 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–396–AD; Amendment 39–13000; AD 2002–26–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A330 and A340 series airplanes, that requires a one-time inspection to determine the manufacturer's name, part number, and date code of certain circuit breakers; and replacement of any suspect circuit breaker with a new improved circuit

breaker. The actions specified by this AD are intended to ensure that proper circuit breakers are installed for the fire extinguishing system or part of the supplemental oxygen supply. A defective circuit breaker, if not corrected, could trip without the cockpit indication light illuminating. If the flightcrew is unaware of this situation while operating the airplane, this latent failure in combination with other failures could present an immediate hazard to the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on August 9, 2002 (67 FR 51789). That action proposed to require a one-time inspection to determine the manufacturer's name, part number, and date code of certain circuit breakers; and replacement of any suspect circuit breaker with a new improved circuit breaker.

Comments

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

Changes to the Final Rule

Since the language in Note 2 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (c) of this final rule.

Conclusion

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

Cost Impact

The FAA estimates that 8 Model A330 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $960, or $120 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.

Currently, there are no Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 2 work hours to accomplish the required action, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD will be $120 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2002–26–12 Airbus: Amendment 39–13000. Docket 2001–NM–396–AD.

Applicability: All Model A330 and A340 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that proper circuit breakers are installed for the fire extinguishing system or part of the supplemental oxygen supply, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, inspect to determine the manufacturer's name, part number, and date code of circuit breakers 1WX, 2WX, and 5WR

through 12WR inclusive, located in the 722VU and 742VU panels; per Airbus Service Bulletin A330–92–3034, Revision 03 (for Model A330 series airplanes); or Airbus Service Bulletin A340–92–4042, Revision 03 (for Model A340 series airplanes); both dated November 13, 2001; as applicable.

Corrective Action

(b) If any Texas Instruments circuit breaker having part number (P/N) E0730–005A7A5A, E0730–005A05AA, E0730–005A7A5B, or E0730–005A05AB, with any date code 96/01 through 98/52 inclusive, is found during the inspection required by paragraph (a) of this AD, before further flight, replace the circuit breaker with a new improved circuit breaker, either having the proper date code or from another manufacturer, per Airbus Service Bulletin A330–92–3034, Revision 03 (for Model A330 series airplanes); or Airbus Service Bulletin A340–92–4042, Revision 03 (for Model A340 series airplanes); both dated November 13, 2001; as applicable.

(c) Inspections and corrective actions accomplished before the effective date of this AD per Airbus Service Bulletin A330–92–3034, dated February 9, 2001; Revision 01, dated April 11, 2001; or Revision 02, dated August 14, 2001 (for Model A330 series airplanes); and Airbus Service Bulletin A340–92–4042, dated February 9, 2001; Revision 01, dated April 11, 2001; or Revision 02, dated August 14, 2001 (for Model A340 series airplanes); are considered acceptable for compliance with the applicable inspections and corrective actions required by this AD.

Part Installation

(d) As of the effective date of this AD, no person shall install any Texas Instruments circuit breaker having P/N E0730–005A7A5A, E0730–005A05AA, E0730–005A7A5B, or E0730–005A05AB with any date code 96/01 through 98/52 inclusive, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with Airbus Service Bulletin A330–92–3034, Revision 03, dated November 13, 2001; or Airbus Service Bulletin A340–92–4042, Revision 03, dated November 13, 2001 excluding Appendix 01, Reporting Sheet, and quality perception form, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–468(B) and 2001–469(B), both dated October 3, 2001.

Effective Date

(h) This amendment becomes effective on February 10, 2003.

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

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–140 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–348–AD; Amendment 39–13008; AD 2002–26–51]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–26–51 that was sent previously to all known U.S. owners and operators of certain EMBRAER Model EMB–135 and –145 series airplanes by individual notices. This AD requires revising the Limitations Section of the Airplane Flight Manual to advise the flightcrew of the possibility of locking of the elevator during takeoff and to provide the appropriate procedures to prevent it. This action is prompted by a report indicating that the elevator locked during the takeoff run on a Model EMB–145 series airplane. The actions specified by this AD are intended to prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane.

DATES: Effective January 13, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–26–51, issued December 20, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before February 5, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–348–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–348–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 amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Bob Breneman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1263; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On December 20, 2002, the FAA issued emergency AD 2002–26–51, which is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes.

Background

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135 and –145 series airplanes. The DAC received a report indicating that the elevator locked during the takeoff run on a Model EMB–145 series airplane. The locking was caused by a restart of the locking sequence, which was initiated by a rearward movement of the gust lock lever (and aggravated by a possible ineffective plunger spring) after the elevator had been unlocked. Locking

of the elevator during takeoff could result in loss of controllability of the airplane.

The DAC issued Brazilian airworthiness directive 2002–12–03, dated December 20, 2002, in order to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination

In light of this information, the FAA finds that certain procedures must be included in the AFM for Model EMB–135 and –145 series airplanes to provide the flightcrew with appropriate procedures for preventing a locked elevator during takeoff. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

FAA's Conclusions

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

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 2002–26–51 to prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane. The AD requires revising the Limitations Section of the Airplane Flight Manual to advise the flightcrew of the possibility of locking of the elevator during takeoff and to provide the appropriate procedures to prevent it. This AD is consistent with the Brazilian airworthiness directive.

Interim Action

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

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 December 20, 2002, to all known U.S. owners and operators of certain EMBRAER Model EMB–135 and –145 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as 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–348–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:

2002–26–51 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–13008. Docket 2002–NM–348–AD.

Applicability: Model EMB–135 and –145 series airplanes, certificated in any category, equipped with an electromechanical gust lock system.

Compliance: Required as indicated, unless accomplished previously.

To prevent locking of the elevator during takeoff, which could result in loss of controllability of the airplane, accomplish the following:

(a) Within 24 clock hours after receipt of this AD, revise the Limitations Section of the Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

''Every single time the gust lock lever is set to the unlocked position, the elevator movement must be checked. This check must be performed no sooner than 10 seconds after positioning the gust lock lever to the fully forward unlocked position by moving the

control column from the full up stop and to the full down stop and back to the full up stop.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 2002–12–03, dated December 20, 2002.

(d) This amendment becomes effective on January 13, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–26–51, issued December 20, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 30, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–149 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14089; Airspace Docket No. 02–ACE–13]

Modification of Class E Airspace; Caruthersville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace at Carthersville, MO. The FAA has developed Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 36 ORIGINAL Standard Instrument Approach procedure (SIAP), RNAV (GPS) RWY 18 ORIGINAL SIAP and VHF Omni-directional Range (VOR)/Distance Measuring Equipment (DME) RWY 18 ORIGINAL SIAP to serve Caruthersville Memorial Airport, Caruthersville, MO. Current Class E airspace at Caruthersville, MO was designed to contain these SIAPs. A recent survey has established a new Airport Reference Point (ARP) for Caruthersville Memorial Airport. This requires that controlled airspace extending upward from 700 feet Above Ground Level (AGL) at Caruthersville, MO be redefined in order to accommodate the SIAPs.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAPs and to aggregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, April 17, 2003.

Comments for inclusion in the Rules Docket must received on or before February 28, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Departmental of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–14089/Airspace Docket No. 02–ACE–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has RNAV (GPS) RWY 36 ORIGINAL SIAP, RNAV (GPS) RWY 18 ORIGINAL SIAP and VOR/DME RWY 18 ORIGINAL SIAP to serve Caruthersville Memorial Airport, Caruthersville, MO. The amendment to Class E airspace at Caruthersville, MO will provide controlled airspace at and above 700 feet AGL to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E 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 will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designation an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified below. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking will be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basic 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 both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2002–14089/Airspace

Docket No. 02–ACE–13'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 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, 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.

* * * * *

ACE MO E5 Caruthersville, MO,

Caruthersville Memorial Airport, MO

(Lat. 36°10′09″ N., long. 89°40′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Caruthersville Memorial Airport.

* * * * *

Issued in Kansas City, MO, on December 20, 2002.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–61 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30347; Amdt. No. 3038]

Standard Instrument Approach Procedures; Miscellaneous Amendments

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

ACTION: Final rule.

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

DATES: This rule is effective January 6, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2003.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regionl Office of the region in which the affected airport is located.

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

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

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

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on December 20, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, and 44721–44722.

2. Part 97 is amended to read as follows:

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

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

* * * Effective Upon Publication

FDC date	State	City	Airport	FDIC No.	Subject
11/14/02	NY	Albany	Albany Intl	2/1946	GPS RWY 19, ORIG–A. This Corrects FDC 2/1946 Published in TL 03–01 Dated 12/6/02.
11/14/02	NY	Albany	Albany Intl	2/1947	GPS RWY 1, ORIG–A. This Corrects FDC 2/1947 Published in TL 03–01 Dated 12/6/02.
1/14/02	NY	Albany	Albany Intl	2/1949	VOR RWY 28, ORIG–A. This Corrects FDC 2/1949 Published in TL 03–01 Dated 12/6/02.
11/14/02	NY	Albany	Albany Intl	2/1950	GPS RWY 28, ORIG–A. This Corrects FDC 2/1950 Published in TL 03–01 Dated 12/6/02.
12/03/02	AR	West Memphis	West Memphis Muni	2/2466	NDB–B, AMDT 3.
12/04/02	AR	Rogers	Rogers Muni-Carter Field	2/2483	VOR/DME RWY 19, AMDT 10.
12/04/02	AR	Fayetteville	Drake Field	2/2484	LDA/DME RWY 34, AMDT 2.
12/04/02	AR	Fayetteville	Drake Field	2/2485	VOR/DME–B, Orig.
12/04/02	AR	Fayetteville/Springdale/Rogers.	Northwest Arkansas Regional.	2/2486	ILS/DME RWY 16, ORIG.
12/04/02	AR	Fayetteville/Springdale/Rogers.	Northwest Arkansas Regional.	2/2487	ILS/DME RWY 34, ORIG.
12/04/02	AR	Springdale	Springdale Muni	2/2488	VOR RWY 18, AMDT 15.
12/04/02	AR	Springdale	Springdale Muni	2/2489	VOR/DME RWY 36, AMDT 9.
12/04/02	AR	Springdale	Springdale Muni	2/2490	ILS RWY 18, AMDT 7.
12/04/02	AR	Fayetteville	Drake Field	2/2491	LOC RWY 16, AMDT 16.
12/04/02	AR	Fort Smith	Fort Smith Regional	2/2494	VOR or TACAN RWY 25, AMDT 20D
12/04/02	OH	Cleveland	Cleveland Hopkins Intl	2/2507	ILS RWY 6L, ORIG.
12/04/02	NC	Wilmington	Wilmington Intl	2/2516	RNVA (GPS) RWY 6, ORIG.
12/05/02	IA	Waterloo	Waterloo Muni	2/2538	RNAV (GPS) RWY 36, ORIG.
12/05/02	IA	Waterloo	Waterloo Muni	2/2539	RNAV (GPS) RWY 18, ORIG.
12/05/02	IA	Waterloo	Waterloo Muni	2/2540	VOR RWY 36, AMDT 17.
12/05/02	IA	Waterloo	Waterloo Muni	2/2541	VOR RWY 18, AMDT 8.

FDC date	State	City	Airport	FDIC No.	Subject
12/05/02	CO	Grand Junction	Grand Junction/Walker Field.	2/2548	LDA/DME RWY 29, ORIG–A.
12/05/02	MI	Grayling	Grayling AAF	2/2558	VOR RWY 14, AMDT 1B.
12/05/02	MI	Grayling	Grayling AAF	2/2562	GPS RWY 14, ORIG.
12/05/02	MI	Grayling	Grayling AAF	2/2563	NDB RWY 14, AMDT 7.
12/05/02	TX	Houston	West Houston	2/2570	RNAV (GPS) Y RWY 33, ORIG.
12/05/02	MS	Tupelo	Tupelo RGNL	2/2710	ILSRWY 36, AMDT 7.
12/06/02	OH	Cleveland	Cleveland Hopkins Intl	2/2506	ILS RWY 6R, AMDT 18.
12/06/02	OH	Cleveland	Cleveland Hopkins Intl	2/2617	RNAV (GPS) Z RWY 6L, ORIG.
12/06/02	OH	Cleveland	Cleveland Hopkins Intl	2/2618	RNAV (GPS) Y RWY 6L, ORIG.
12/13/02	TX	McKinney	McKinney Muni	2/2769	ILS RWY 17, AMDT 1C.
12/13/02	SC	Greenwood	Greenwood County	2/2787	VOR RWY 27, AMDT 12.
12/13/02	ND	Bismarck	Bismarck Muni	2/2810	ILS RWY 13, AMDT 2B.
12/13/02	ND	Bismarck	Bismarck Muni	2/2812	RNAV (GPS) RWY 3, ORIG–A.
12/13/02	ND	Bismarck	Bismarck Muni	2/2813	RNAV (GPS) RWY 21, ORIG–B.
12/13/02	ND	Bismarck	Bismarck Muni	2/2815	RADAR–1, AMDT 3.
12/17/02	AR	Rogers	Rogers Muni-Carter Field	2/2889	VOR RWY 1, AMDT 13A.
12/18/02	ND	Bismarck	Bismarck Muni	2/2898	ILS RWY 31, AMDT 32B.
12/19/02	PA	Philadelphia	Wings Field	2/2934	RNAV (GPS) RWY 24, Orig. This Notam Replaces FDC 2/2329 Intl03–01.

[FR Doc. 03–96 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505–AA35

Financial Crimes Enforcement Network; Anti-Money Laundering Requirements—Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks; Correction

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule; correction.

SUMMARY: FinCEN published in the **Federal Register** of September 26, 2002, a document (67 FR 60562) finalizing a rule to require certain financial institutions to obtain information from each foreign bank for which they maintain a correspondent account concerning (1) the foreign bank's status as ''shell'' bank, (2) whether the foreign bank provides banking services to foreign shell banks, (3) certain owners of the foreign bank, and (4) the identity of a person in the United States to accept service of legal process. The document contained an incorrect citation to a website maintained by the Federal Reserve Bank.

DATES: This correction is effective October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections provides guidance under 31 U.S.C. 5318(j).

Need for Correction

As published, the final rule contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

In final rule FR Doc. 02–24142, published on September 26, 2002 (67 FR 60562), make the following correction:

On page 60568, in column 1, correct footnote 25 to read as follows:

''[25] A covered financial institution may verify that a foreign bank is required to file an FR Y–7 by checking the list of foreign banks with U.S. offices at *http://www.federalreserve.gov/releases/iba/default.htm.*''

Dated: December 30, 2002.

Cynthia L. Clark,

Deputy Chief Counsel, Financial Crimes Enforcement Network, Federal Register Liaison.

[FR Doc. 03–192 Filed 1–3–03; 8:45 am]

BILLING CODE 4810–02–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 112]

RIN 3090–AH77

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule decreases the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to decrease the mileage allowance for advantageous use of a privately owned airplane from 97.5 to 95.5 cents per mile, the cost of operating a privately owned automobile from 36.5 to 36.0 cents per mile, and the cost of operating a privately owned motorcycle from 28.0 to 27.5 cents per mile.

DATES: *Effective Date:* January 1, 2003.

Applicability Date: This final rule applies to travel performed on or after January 1, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GSA Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Devoanna R. Reels, Program Analyst, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–3781. Please cite FTR Amendment 112.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations. Subsection (b) of section 5707 of title 5, U.S.C., requires the Administrator of General Services, in consultation with the

Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress, and a copy of the report appears as an attachment to this document. The report is being published to comply with the requirements of the law. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 95.5 cents for airplanes, 36.0 cents for automobiles, and 27.5 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.0 cents effective January 1, 2003.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

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

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: December 24, 2002.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, amend 41 CFR part 301–10 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118.

2. Revise section 301–10.303 to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
Privately owned aircraft (*e.g.*, helicopter, except an airplane)	Actual cost of operation (*i.e.*, fuel, oil, plus the additional expenses listed in § 301–10.304).
Privately owned airplane	195.5.[1]
Privately owned automobile	136.0.[1]
Privately owned motorcycle	127.5.[1]

[1] Cents per mile.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles

Subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a privately owned automobile (POA). As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 36.0 cents effective January 1, 2003.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 95.5 cents for airplanes, 36.0 cents for automobiles, and 27.5 cents for motorcycles.

I have issued a regulation decreasing the current 97.5 to 95.5 cents for privately owned airplanes, 36.5 to 36.0 cents for privately owned automobiles, and 28.0 to 27.5 cents for privately owned motorcycles. This report to Congress on the cost of operating POVs will be published in the **Federal Register**.

[FR Doc. 03–136 Filed 1–3–03; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1860

[WO–350–1864–24 1A]

RIN 1004–AD50

Conveyances, Disclaimers and Correction Documents

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) amends its regulations pertaining to recordable disclaimers of interest in land. We are amending the regulation by: removing the 12-year regulatory filing deadline for states; removing the requirement that an applicant be a ''present owner of record'' to be qualified under the Act; allowing any entity claiming title, not just current owners of record, to apply for a disclaimer of interest; defining the term ''state'' as it is used in this rule; clarifying how we will approve

disclaimer applications involving another Federal land managing agency.

DATES: This rule is effective February 5, 2003. Any application for a recordable disclaimer pending on the effective date of this final rule will be subject to this final rule.

FOR FURTHER INFORMATION CONTACT: Jeff Holdren 202 452–7779. Individuals who use a telecommunications device for the deaf may contact Mr. Holdren through the Federal Information Relay Service at 1–800–877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of This Rulemaking?

Section 315 of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of the Interior, through a delegation of authority to BLM, to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where the Secretary determines a record interest of the United States in lands has terminated by operation of law or is otherwise invalid (43 U.S.C. 1745(a)). BLM may issue recordable disclaimers to disclaim Federal title in a wide variety of instances, including avulsion, reliction, or accretion of lands, survey errors, clerical errors, or when applicants assert title previously created under now expired authority.

The following statutory requirements must be met before the Secretary can issue a disclaimer:

1. An applicant must file a written application with the Secretary.

2. The Secretary must publish a notice in the **Federal Register** of the application setting forth the grounds supporting it at least ninety days before the issuance of the disclaimer.

3. The applicant must pay the Secretary the administrative costs associated with issuance of the disclaimer. The Secretary determines the amount of the costs.

4. The Secretary must consult with any affected Federal agency.

BLM published regulations implementing the Secretary's authority under section 315 of FLPMA to issue recordable disclaimers in 1984 (49 FR 35296). These regulations imposed requirements in addition to those identified in the statute. Specifically, the regulations restrict applicants for a disclaimer to ''any present owner of record'' (43 CFR 1864.1–1). The regulations also specify information the applicant must submit in the application and the costs associated with submitting an application. For example, an applicant is required to submit ''[a]ll documents which show to the satisfaction of the authorized officer the applicant's title to the lands.'' (43 CFR 1864.1–2(c)(3)) This requirement may be waived if BLM believes it is not needed to properly adjudicate the application. The regulation requires that BLM deny an application if more than 12 years have passed since the owner knew or should have known of the alleged claim of the United States (43 CFR 1864.1–3(a)(1)).

''Interest in land'' can pertain to various situations because there are different types of interests a property owner can hold. For example, for a specific parcel of land, interests could include surface rights, subsurface rights, mineral interests, timber interests and various other interests which, when combined, equate to a fee simple interest for that parcel. Interests in land can be sold, given away, leased, or otherwise transferred from one entity to another by means of various conveyance documents (*e.g.,* deed or patent). They may also be temporarily transferred from the one entity to another by means of a lease, permit, license, or other such document.

Some Federal property interests may transfer by operation of law to another entity. For example, the Submerged Lands Act (43 U.S.C. 1301–1315), provides that title to the bed of navigable water bodies passes from Federal to state ownership when the state is admitted to the Union. The Act does not require that BLM either initiate or complete this title transfer of land, but by providing a recordable disclaimer of interest, BLM may lessen future disputes.

On February 22, 2002, we published in the **Federal Register** (67 FR 8216) a proposed rule to amend our regulations pertaining to Conveyances, Disclaimers, and Corrections Documents. The proposal sought to amend certain provisions of the regulations originally published in 1984. The proposed rule would further the purpose of section 315 of FLPMA to remove clouds on title to lands or interests in lands by allowing any entity claiming title, rather than only a present owner of record, to apply for a recordable disclaimer of interest. The proposed rule also sought to eliminate the application deadline in section 1864.1–3, as it applies to states. This change would conform the regulations more closely to the Quiet Title Act (28 U.S.C. 2409a(g)) which, in most instances, exempts states from the 12-year statute of limitations under that act. These two technical changes are the only ones that BLM proposed in February 2002 to the 1984 regulations.

Basis and Purpose for the Final Rule

This final rule removes certain restrictions from the current rule that are not required by section 315 of FLPMA (43 U.S.C. 1745). The final rule also reflects a change that Congress made to the Quiet Title Act in 1986 (28 U.S.C. 2409a). These amendments to 43 CFR subpart 1864 will make the recordable disclaimer regulations more consistent with both section 315 of FLPMA and the Quiet Title Act. This rule will reduce the potentially inconsistent administrative interpretations and application of the recordable disclaimer regulations by eliminating the requirement that an applicant be a ''present owner of record.''

Specifically, this final rule amends the regulations by incorporating the following changes to the way we process disclaimers of interest. The rule:

- Eliminates the application deadline in 43 CFR 1864.1–3 as it applies to ''states.''
- Allows any entity claiming title, not just current owners of record, to apply for a recordable disclaimer of interest.
- Defines state as used in this rule.
- Clarifies how BLM will evaluate disclaimer of interest applications pertaining to non-BLM federally managed lands.

II. How Did BLM Change the Proposed Rule in Response to Comments?

In this preamble, we respond to significant comments we received on the February 22, 2002, proposed rule (67 FR 8216). Because a majority of responses were form letters opposing the rule, we address those comments generally. We have directly responded to individual substantive comments in support of or in opposition to the rule. In response to several comments we have:

1. Included a definition of ''state,'' as it is used in this rule, and

2. Clarified how BLM will process disclaimer of interest applications affecting non-BLM managed lands.

III. Responses to Comments

During the 60-day comment period BLM received about 18,000 comments in support of, or in opposition to, the proposed rule. Most of the correspondence consisted of form letters

expressing opposition to the proposed rule for a variety of reasons.

General Comments Opposing the Proposed Rule

Letters opposing the rule generally stated the rule would:

- Enable BLM to transfer large tracts of public lands to states;
- Impact sensitive wilderness and roadless areas; and
- Adversely affect wildlife and habitats by allowing states to build major thoroughfares through wild land areas.

General Comments Supporting the Proposed Rule

Letters supporting the rule generally stated the rule would:

- Maintain access to public lands on existing routes in rural areas;
- Support state control over routes in rural places; and
- Ease the process whereby BLM could transfer public land to states.

We are responding to these general comments as they arise in the context of more specific substantive comments on the proposed rule.

Several commenters claimed that the proposed rule is illegal because 43 U.S.C. 1745 does not allow BLM to alter the intent of the statute from the present owner of record to ''any entity claiming title to lands.'' Other commenters asserted that the proposed changes are inconsistent with 43 CFR Subpart 1864 because they do not further the purpose of 43 U.S.C. 1745 and would lead to an increase in inconsistent administrative interpretations, and would allow anyone to make a claim, not just the existing owners of record.

We disagree. The term ''present owner of record'' is not found in FLPMA. In the existing regulations, published in 1984, BLM required the applicant to be a present owner of record to prelude third parties having no property interest in the lands in question from applying for a recordable disclaimer. We think this present-owner-of-record requirement is inconsistent with the actual language of section 315 of FLPMA. The present-owner-of-record concept artificially limits FLPMA's goal of eliminating clouds on title. A cloud on title is less likely when there is also an actual present owner of record. Land title disputes often arise with parties who have gained title by operation of law, such as states that obtained title under the Submerged Lands Act to lands under navigable bodies of water. For example, a state applying for a recordable disclaimer may not have a record of the state's title to the lands in question in a county clerk's office. Nevertheless, Congress has passed title to the state by virtue of the Submerged Lands Act. Moreover, today's rule does not increase the potential for inconsistent administrative interpretations. Applications containing invalid claims will be rejected regardless of whether they were filed by present owners of record or others.

A significant number of comments asked about the relationship between the proposed rule and R.S. 2477. A coalition of California conservation organizations expressed concern that the proposed rule was intended to facilitate disclaimers by the United States of its interest in lands that are used for recreation, conservation, wilderness and other public purposes, as a result of R.S. 2477 right-of-way claims by individuals and local and state governments. The commenters believe that the FLPMA disclaimer-of-interest procedure was not intended to include R.S. 2477 claims within its scope and that BLM has no legal authority to employ the disclaimer provisions to process, acknowledge or determine the existence or extent of R.S. 2477 rights-of-way.

Revised Statutes (R.S.) 2477, first enacted as section 8 of the Mining Act of 1866, states that ''the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.'' 43 U.S.C. 932 (repealed 1976). R.S. 2477 was repealed by FLPMA on October 21, 1976 (Pub. L. 94–579, Sec. 706(a), 90 Stat. 2744, 2793). FLPMA did not terminate valid rights-of-way existing on the date of its approval (Sec. 509(a), 90 Stat. 2781, 43 U.S.C. 1769; Sec. 701(a), 90 Stat. 2786, 43 U.S.C. 1701 note). In most instances, R.S. 2477 rights-of-way were not recorded on the public land records or in official county records because R.S. 2477 did not require any formal approval from the Secretary of the Interior or other Federal government official. The uncertainty resulting from unrecorded rights-of-way under R.S. 2477 has created clouds on title.

FLPMA authorizes the Secretary of the Interior to issue recordable disclaimers of interest in lands in specified cases if the disclaimer will help remove a cloud on the title to lands or interests in lands and if the Secretary finds no Federal interest (43 U.S.C. 1745(a)). Recordable disclaimers may be issued where applicants assert title previously created under now expired authorities. For example, after adjudicating the claim, BLM may issue a recordable disclaimer of interest to disclaim the United States' interest in a highway right-of-way under R.S. 2477.

Many commenters, including a consortium of 14 environmental groups, expressed concern about the relationship of this rulemaking to the 1996 Congressional moratorium placed on the Department and other Federal agencies on R.S. 2477 rulemakings. The commenters expressed the view that the proposed rule would be illegal because section 108 of the Omnibus Interior Appropriations Act for Fiscal Year 1997 prohibits Federal agencies from placing into effect any final rule or regulation pertaining to the recognition, management or validity of a right-of-way pursuant to R.S. 2477 unless expressly authorized by an Act of Congress (110 Stat. 3009–200).

We do not believe that the Congressional moratorium on R.S. 2477 rulemaking precludes BLM from making effective this final rule implementing the Secretary of the Interior's authority to issue recordable disclaimers of interest in lands. On August 1, 1994, the Department of the Interior proposed new regulations (59 FR 39216) to create an administrative process for resolving right-of-way claims made under R.S. 2477. Before the R.S. 2477 proposed rule was published as a final rule, Congress enacted a moratorium prohibiting any Federal agency from preparing, promulgating, or implementing any rule or regulation regarding R.S. 2477 rights-of-way until September 30, 1996. This provision was an amendment to the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568, 617–18 (1995)). Congress extended the prohibition on ''developing, promulgating, and thereafter implementing a rule concerning rights-of-way under section 2477 of the Revised Statutes' in the Fiscal Year 1996 Interior and Related Agencies Appropriations Act (Pub. L. 104–134, 110 Stat. 1321, 1321–177 (1996)). In section 108 of the Fiscal Year 1997 Department of the Interior and Related Agencies Appropriations Act (Interior Appropriations Act, 1997) (Pub. L. 104–208, 110 Stat. 3009, 3009–200 (1996)), Congress stated that:

No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.

Section 108 could be construed as either permanent legislation or as having expired at the end of fiscal year 1997. If section 108 is construed as permanent legislation, it would prohibit the Department from making effective a

final rule or regulation pertaining to the ''recognition, management, or validity'' of a right-of-way pursuant to R.S. 2477. In 1997, the General Counsel of the General Accounting Office (GAO) issued an opinion concluding that section 108 is permanent law and did not expire at the end of the 1997 fiscal year (Letter of Robert P. Murphy, General Counsel, GAO, B–277719, at 1 (Aug. 20, 1997)).

Even if section 108 is permanent legislation, it only applies to ''final rules or regulations'' relating to the ''recognition, management, or validity of a right-of-way'' pursuant to R.S. 2477. Because today's final rule merely amends BLM's existing regulations, which define the administrative process by which an entity can apply for a recordable disclaimer of interest under section 315 of FLPMA, the section 108 moratorium does not apply to this final rule.

If section 108 were interpreted to prevent BLM from promulgating a regulation relating to recordable disclaimers of interest, section 108 would, in essence, partially repeal sections 310 and 315 of FLPMA (43 U.S.C. 1740, 1745). Under section 310, BLM is authorized to ''promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands.'' Section 315 is the specific substantive authority for BLM's disclaimer regulations (43 U.S.C. 1745(c)). As a general rule, courts do not favor repeals by implication. In *Morton* v. *Mancari* (417 U.S. 535, 550 (1974)), the Supreme Court stated: ''In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable.'' In *Tennessee Valley Authority* v. *Hill* (437 U.S. 153, 190 (1978)), the Supreme Court stated that the doctrine disfavoring repeals by implication applies with even greater force when the claimed repeal rests solely on an appropriations act.

Although repeals by implication are especially disfavored in the appropriations context, Congress nonetheless may amend substantive law in an appropriations statute if Congress does so clearly. (*Robertson* v. *Seattle Audubon Society,* 503 U.S. 429, 440 (1992)). The question depends on the intention of Congress as expressed in the statute. See *United States* v. *Mitchell,* 109 U.S. 146, 150 (1883). Therefore, unless Congress clearly intended to amend sections 310 and 315 of FLPMA, section 108 of the Interior Appropriations Act, 1997, and sections 310 and 315 of FLPMA are all effective.

Section 108 contains broad language and does not indicate which final rules or regulations are encompassed by the words ''pertaining to the recognition, management, or validity of a right of way pursuant to Revised Statute 2477.'' The legislative history, however, indicates that Congress enacted section 108 to prevent the Department of the Interior from promulgating final rules and regulations setting out specific standards for R.S. 2477 rights-of-way. (See H.R. Rep. No. 104–625, at 58 (1996)). Instead, Congress itself wanted to enact legislation defining the key terms and scope of grants for R.S. 2477 rights-of-way. The House Committee on Appropriations stated that:

[T]he public interest will be better served if these grants [for highway rights-of-way across Federal land] to States and their political subdivisions are not put in jeopardy by the Department pending Congressional clarification of these issues. Section 109 does not limit the ability of the Department to acknowledge or deny the validity of claims under RS 2477 or limit the right of grantees to litigate their claims in any court.

Section 109 of H.R. 3662, the Department of the Interior and Related Agencies Appropriations Bill, 1997, was renumbered section 108 after the Senate Appropriations Committee deleted section 107, an unrelated section of H.R. 3662, in its entirety (S. Rep. No. 104–319, at 56 (July 16, 1996)). The Appropriations Committee reported the bill to the Senate and recommended it pass, as amended. Accordingly, when Congress enacted section 108, it did not intend to prohibit the promulgation of all final rules and regulations that may, directly or indirectly, address R.S. 2477 rights-of-way but, rather, those that provide standards for recognizing, managing or validating an R.S. 2477 right-of-way.

Today's rule on recordable disclaimers does not provide standards for recognizing managing, or validating an R.S. 2477 right-of-way. Rather, BLM's rule merely makes technical changes to the existing regulations under which an applicant may submit an application to remove a cloud on title to lands to which the United States asserts no ownership or interest. First, the rule amends the existing regulations to allow any entity claiming title, as opposed to only present owners of record, to apply for a recordable disclaimer of interest. This change eliminates inconsistent administrative interpretations of the owner-of-record requirement, a term that is not defined in the existing 1984 regulations. Second, the final rule eliminates the application deadline in section 1864.1–3, as it applies to states. This change conforms the regulations to the Quiet Title Act, 28 U.S.C. 2409a(g), which exempts states, in most instances, from the twelve-year statute of limitations under that Act. These changes to the existing regulations do not expand the kinds of circumstances in which a disclaimer could be issued, expand or modify any rights created, or create any new rights under R.S. 2477. BLM may issue recordable disclaimers relating to valid R.S. 2477 rights-of-way under the existing 1984 regulations, and this capability will continue under today's final rule.

Even if BLM were to issue a disclaimer of the United States' interest in a valid right-of-way under R.S. 2477, the recognition of such right-of-way would not be the result of this notice-and-comment rulemaking but, rather, an informal agency adjudication resulting in a final decision. (See 5 U.S.C. 551(7)) The legislative history of section 108 expressly states that Congress ''does not limit the ability of the Department to acknowledge or deny the validity of claims under RS 2477 or limit the right of grantees to litigate their claims in any court.'' (H.R. Rep. No. 104–625, at 58 (1996)). Because BLM's rule is not a final rule or regulation relating to the ''recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477,'' this rule is not subject to the moratorium in section 108 of the 1997 Interior Appropriations Act.

Several commenters expressed concerns that today's rule will enable states to make ''illegal'' R.S. 2477 claims on ''cow paths'' and ''foot trails'' and turn them into major thoroughfares in sensitive areas.

We disagree that the changes to the existing rule will allow illegal claims. If an applicant does not have a valid, legal title, BLM will reject the disclaimer application. The existing 1984 rule and today's final rule are the same in this regard.

The Southern Utah Wilderness Alliance (SUWA) opposed the rulemaking because it did not mention any case law, particularly *SUWA and Sierra Club* v. *BLM,* (96–CV–836C (D. Utah); appeal pending, No. 01–4173 (10th Cir.)). SUWA believes this omission invites attempts to evade application of this case and others in an effort to validate R.S. 2477 claims which could never meet the legal prerequisites. The group also asserted that the proposed rule did not describe the standards BLM would apply in determining whether to grant recordable disclaimers.

This rulemaking pertains only to disclaimers and not to any assertions

made by various entities for R.S. 2477 claims. Therefore, a discussion of this case law is not germane to today's rulemaking.

An Alaskan environmental group believes the proposed rule is not necessary to provide appropriate access across Alaska lands because there exist statutory processes to determine rights-of-way for roads and other access across most of the land affected by R.S. 2477 assertions. The group also states that recognizing R.S. 2477 assertions under the proposed rule will undermine these established processes and frustrate land management efforts of responsible public and private landowners.

The existing regulations already allow applications for disclaimers for R.S. 2477 rights-of-way, and this has not undermined established processes for determining access. This rulemaking makes technical changes to the existing rule.

Many commenters, including the Idaho County Farm Bureau, and the consortium of environmental groups, expressed concern that BLM is proposing the rule to circumvent FLPMA and Congressional restrictions against implementing R.S. 2477 rights-of-ways. The commenters assert that Congress provided a means to grant rights-of-way under FLPMA, negating the need for R.S. 2477. The focus of their concern is that this proposed rule will allow states to acquire sensitive lands, the BLM to circumvent the environmental impact review process, and the BLM's ability to charge fair market value rentals under Title V of FLPMA.

FLPMA repealed R.S. 2477 and provided for applications for new rights-of-way. Sections 509(a) and 701(h) of FLPMA also preserved valid existing rights-of-way. Therefore, although FLPMA created more flexible authority to address right-of-way issues, it did not displace existing rights-of-way authorized by Congress.

States may seek disclaimers to sensitive lands for which they already hold title. For example, submerged lands under navigable bodies of water may be environmentally sensitive. Congress, however, granted states title to these lands. A disclaimer would merely provide evidence of an existing title. Because the state already owns such lands, there would be no need for environmental studies or rental payments.

A commenter opposed the proposed rule because the commenter believes that the proposed rule change is not necessary. The commenter also stated the BLM Questions and Answer sheet and press release accompanying the rule were confusing and obfuscated facts relating to R.S. 2477. The commenter also expressed concern that the proposed rule could allow ''counties and other 'sagebrush rebel' entities in the West to file claims for public lands, with minimal processing of claims and no time limitations.'' Lastly, the commenter believes the rule will result in increased trespass incidents and other illegal activity by those wishing to lay claim under the proposed rule change to public lands, creating long term effects on the entire western ecosystem and native species.

BLM regrets that the Question and Answer document was confusing to the commenter and did not create the clarity we intended. BLM intends that this preamble will clear up any misunderstanding regarding this rulemaking. As we have stated, this rulemaking does not change the requirements for asserting title to an R.S. 2477 right-of-way. The rulemaking is intended only to make it easier for BLM to clear up clouded titles when the United States has no interest in the lands in dispute. A disclaimer of interest does not convey an interest in land. It is an administrative determination that the United States does not have an interest in land.

The Local Highway Technical Assistance Council of Boise, Idaho, asked BLM to clarify the current means besides FLPMA that can be used to secure a right to an R.S. 2477 highway reservation.

FLPMA repealed R.S. 2477 in 1976. There is no longer any way to secure a new right to an R.S. 2477 right-of-way. An existing owner of an R.S. 2477 right-of-way may apply for a recordable disclaimer under existing regulations or as amended in this final rule. A quiet title action in federal court is the only other way to resolve R.S. 2477 claims with finality. The purpose of section 315 of FLPMA is to avoid litigation in Federal court.

The Nye County Commissioners, Nevada, believe that the proposed rule may resolve some questions relating to R.S. 2477 rights-of-way but are concerned that the proposed rule is inapplicable to R.S. 2477 rights-of-way (or any other rights-of-way), because the United States continues to hold a valid interest in underlying lands. The Commissioners expressed support for BLM's effort but did not support the proposed rule.

If a state made a valid R.S. 2477 right-of-way claim on public land, only the rights pertaining to the right-of-way are authorized for use. The commenter is correct that the BLM would retain all other rights, such as the right to sell the land, allow mining claims to be filed, or administer the lands for appropriate purposes. BLM may issue recordable disclaimers for interests in land and is not limited to disclaiming only fee simple title.

An environmental group believes BLM has purposefully and incorrectly stated the purpose and intent of the proposed rule by citing it as a relatively minor revision to an obscure regulation with little substantive impact. The group believes this hampered the public review process by not informing the public about the importance of this proposed rule.

We disagree that this rulemaking is a major regulatory action. We believe that we adequately and accurately presented the purpose and intent of the proposed rule. The rulemaking makes technical changes to the existing rule. These changes are outlined within the **SUMMARY** section of this preamble. BLM has issued 62 recordable disclaimers since the enactment of FLPMA in 1976; on average, fewer than 3 recordable disclaimers annually.

The Blue Ribbon Coalition supported the proposed rule and asked BLM to clarify whether a disclaimer of interest process must be followed for each and every right-of-way under consideration. The group also asked BLM to explain how difficult and complex the process would be for the applicant and the BLM for other types of interest that may be disclaimed under section 315.

An applicant may apply for as many disclaimers as it has clouded titles which may benefit from the process. The complexity of the process depends upon the nature of the ownership sought. Titles clouded by avulsion, reliction or accretion may require historic maps and patents and newly-created data, such as aerial photographs. State applications for disclaimers for submerged lands may require detailed studies of water levels and commercial traffic at the time of statehood.

A consortium of environmental groups believes the proposed rule changes would have a direct effect on private property land rights because it would lead to numerous rights-of-way crossing state and private land. The commenters also believe the proposed rule will ''cloud title'' to large amounts of public and private land by extending the time that states are allowed to file claims. The commenters are concerned that the rulemaking will affect private property owners and title insurance companies because BLM has not made any effort to notify them of these potential impacts.

Today's rule will not adversely affect private property land rights. As we have

stated, this rulemaking pertains to disclaimers of interest in federal lands. It does not apply to private or state lands. BLM does not anticipate that title to private land will become clouded by implementation of this final rule. We expect the opposite to occur—title issues arising from a variety of issues may now be resolved by means of issuing a disclaimer of interest.

Commenters asserted that the proposed rule would enable BLM to transfer large tracts of public lands to states and increase environmental impacts on sensitive areas.

BLM may issue a disclaimer only when an applicant can show that a specific property right is not held by the United States and the applicant has requested that BLM document this by means of a recordable disclaimer. The rule would not enable BLM to transfer vast tracts of land to states. Any land disclaimed would already be owned by the applicant, with or without the disclaimer. This rule would not result in either an increase or decrease in environmental impacts.

States may apply for recordable disclaimers for valid R.S. 2477 claims. Applications will be evaluated on their merits and, if the claims are valid, BLM may issue a disclaimer of interest.

Another environmental group was concerned that the rulemaking will circumvent the public comment procedure by placing the determination of ''interest'' in the hands of the agency. The group does not believe BLM has made provisions for public notice, comment, participation, or appeal of its disclaimers which they believe deprives the public of protections during the process of determining the ownership of federal lands.

Today's rule does not impede or remove opportunities for public notice or appeal provisions for disclaimers. The existing regulations at Subpart 43 CFR 1864 address the group's concerns about public input. Specifically, section 1864.2 provides that BLM must file a notice of the application and the grounds supporting it in the **Federal Register** at least 90 days before a decision is made on the application. Also, BLM publishes a notice describing the application and its justification in a newspaper serving the general vicinity of the lands that are the subject of application for three consecutive weeks during the 90-day time period. Today's rule does not address this section. Under 43 CFR 1864.4, ''an applicant or claimant adversely affected by a written decision of the authorized officer'' may appeal to the Interior Board of Land Appeals under 43 CFR part 4.

Regarding the group's suggestion that BLM seek public input to determine ownership of public lands, the point is not determining ownership of lands, but rather how to remove clouds on title to land to which the United States disclaims title. In this case we continue the existing process.

The Gilpin County Commissioners, Colorado, expressed concern about the rule's potential to open ''historic roads and tracks,'' increase threats of erosion, and introduce noxious weeds into unroaded areas. The commissioners believe this rule could harm small ranchers who have rights on BLM lands.

This final rule will not result in the situations the commenters pose. The applicant would already own any land or interests disclaimed. With or without the disclaimer the same impacts would occur, so there is no environmental impact from this rule. The rule does not apply to private lands and does not affect grazing permits.

The San Bernardino County, Department of Public Works, California, and others, asked whether an applicant must apply and be denied a right-of-way under the FLPMA or other statute before requesting a disclaimer of interest.

The denial of a right-of-way application under FLPMA has no bearing on a request for a disclaimer of interest.

Several commenters, including The National Parks Conservation Association, and the Nye County Commissioners, Nevada, asked how the BLM can process disclaimers of interest on behalf of another surface management agency because BLM's mandate may differ from that of other agencies. The commenters raised the following concerns:

- The final rule may alienate thousands of acres of park lands and instigate construction of roads and other structures on NPS lands.
- The proposed rule could frustrate Congressional intent for the protection and management of resources contained within the National Park system.
- It is not clear how the rule will apply to lands under the jurisdiction of DOI agencies other than BLM.
- How will the rule pertain to lands that were under BLM jurisdiction in 1976, but which have since been transferred by Congress to other DOI agencies?

Section 315 gives the Secretary of the Interior the authority to issue recordable disclaimers when a record interest of the United States in lands, whether managed by Interior or not, has terminated by operation of law or is otherwise invalid. The Secretary has delegated the authority to BLM to issue disclaimer documents when BLM determines that a disclaimer of interest application is valid. Under the existing 1984 regulations, BLM will refer an application involving lands administered by another agency to that agency for review and comment.

The U.S. Forest Service provided comments generally supporting the proposed rule. We believe its comments are also helpful in responding to the above concerns. The Forest Service stated:

If implemented the proposed rule could improve our abilities to resolve certain forms of land title claims by states, such as title to the beds and banks of navigable streams, and for rights-of-way for highways under the Revised Statute (''RS'') 2477 (repealed). Currently there is no administrative process available for states or land management agencies like the Forest Service, to resolve such title claims; the process is time consuming and requires expensive litigation in Federal Courts. * * * [T]he proposed rule for recordable disclaimers of title would provide a useful tool in resolving some state land title claims. With the addition of a provision stating BLM will not authorize any application over the objections of the Forest Service for claims on National Forests, we would strongly support the proposal.

BLM has responded to the Forest Service's comments by adding language to the final rule clarifying that BLM will not issue a disclaimer of interest over the valid objections of the surface managing agency having jurisdiction over the affected lands.

Gilpin County, Colorado, and Valley County, Idaho, expressed concern that the proposed $100 fee is ambiguous and excessive. Valley County asked if the application fee would apply to each route upon which an assertion is made. They are concerned that this could result in hundreds of dollars in fees for large counties. Gilpin County requests that BLM consider a one-time processing fee for a block of applications.

We disagree that the $100 application fee, which exists in the current regulations, is ambiguous and excessive. The existing regulations at 43 CFR 1864.1–2(b) provide that ''a nonrefundable fee of $100 shall accompany the application.'' This fee will not change as a result of this rulemaking. Subpart 1864 distinguishes between filing fees and administrative processing costs. Neither the proposed rule nor today's final rule alter these requirements.

The San Bernardino County Department of Public Works in

California criticized any potential cost recovery that the rulemaking may impose because the number of claims the county might potentially file could create a financial burden on San Bernardino County .

This rulemaking does not change BLM's application procedures or fee structures and does not involve cost recovery. Each application would be subject to the $100 application fee unless BLM waives it. Section 304(c) of FLPMA authorizes the Secretary, through BLM, to either reduce or eliminate charges for administrative costs. BLM will continue to place the money it collects into the U.S. Treasury for use for various public purposes. If BLM receives multiple applications, the individual case costs should be less, or BLM may waive the processing costs if many applications cover similar types of filings.

A commenter stated the proposed rule does not specify how to process the application or reference what the application requirements will be. The commenter says BLM must be specific about these and reference them in the final rule.

BLM has addressed the application requirements in the existing regulations at 43 CFR 1864.1–2. The final rule does not alter these requirements.

Another commenter asked how the public will know whether the fee and deposit are fair, if only BLM determines what fees the applicant must pay.

BLM is planning to issue guidance to field offices on how to establish fees and parameters to ensure fairness. The guidelines will include a provision that returns a portion of the fee if the application is denied. (Until those guidelines are completed, 43 U.S.C. 1735(a) provides an explanation of how BLM handles deposits and forfeitures.)

43 CFR 1864.1–3(c) (Action on application) and 43 CFR 1864.2(a) (Decision on application) explain BLM's procedure for billing an applicant for a disclaimer of interest application. BLM has chosen not to estimate an average cost to process a disclaimer of interest application because of the variable factors in each application. However, on a case-by-case basis, we inform the applicant of the estimated costs. When the application processing is completed, BLM will give the applicant a final accounting, which will either require payment of additional fees, or, if an applicant has overpaid BLM, we will issue a refund. Today's rule does not change the process.

A commenter asked whether BLM State Directors should have the authority to issue disclaimers of interest. Otherwise, subsequent administrations will have the authority to change the rule.

The Secretary has already delegated the authority to process disclaimers of interest to the BLM Director, who in turn has delegated this authority to State Directors. Delegations of authority are always subject to change.

A commenter asked if the rule would apply to unpatented mining claims or other mineral interests.

The rule will not apply to a mining claim title. Title to mining claims is determined under the General Mining Law of 1872, as amended, and BLM regulations at 43 CFR Part 3800. BLM will determine whether the rule applies to clouded private mineral interests on a case-by-case basis. In general, the public obtains Federal mineral interests through leases BLM issues under the Mineral Leasing Act (30 U.S.C. 181 *et seq.*), or sales authorized by the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

Section 1864.0–5 Definitions

In response to several comments we are adding language to section 1864.0–5 in today's rule to clarify that the term ''state.'' As used in this rule, we define ''state'' as ''the state and any of its creations including any governmental instrumentality, within a state, including cities, counties, or other official local governmental entities.''

The Commissioners of Valley County, Idaho, believe the term ''state'' as used in the proposed rule to determine who would receive the benefit of the waiver of the 12-year filing deadline, is too restrictive because the state may not always support local government assertions and could prevent local government's from filing applications for disclaimers of interest. The Commissioners recommended that the regulations provide for local governments to apply directly.

We have defined the term ''state'' to include local governments. We do not believe the rule will create restrictions upon states or other governmental instrumentalities within the state. States may file an application for a disclaimer where a title defect appears to exist. Because counties and other entities of local government are within the jurisdiction of a state, they will have the same rights as a state. The waiver applies to counties by definition.

Section 1864.1–1 Filing of Application

Current section 1864.1–1 (a) provides, in part, that any ''present owner of record may file an application to have a disclaimer of interest issued.'' The phrase ''present owner of record'' is not defined in Subpart 1864.

FLPMA neither uses nor defines this phrase. In real property parlance, the term ''present owner of record'' usually refers to a property owner in whose name the title appears in the official records of a county recorder's office or other office of record. Thus, it appears that the phrase ''present owner of record'' in section 1864.1–1 potentially could limit applications for a disclaimer of interest in a way that would unduly restrict the Secretary's broad authority under section 315 of FLPMA.

Today's rule amends this paragraph by removing the phrase ''present owner of record'' and replacing it with ''any entity claiming title to lands.'' This change clarifies that it is the interest in the lands, rather than record ownership, that determines whether an entity is eligible to apply for a disclaimer of interest. This change also broadens the class of potential applicants for disclaimers of interest, which could include, among others, a state, corporation, county, or a single individual. The language is unchanged from the proposed rule.

Several commenters did not think BLM was clear on the standards we will apply when determining whether or not to issue a disclaimer of interest. The commenters urged BLM to apply standards that are ''crisp, rigorous, and conform to recent federal case law.'' The commenters believe that because an applicant doesn't need to have color of title to request a disclaimer of interest, this makes the proposed rule an ''illegal land granting statute.'' The commenters state that BLM must also correct the language of the original 1984 regulation (section 1864.0–5) purporting to define lands to include lands ''now or formerly forming a part of the reserved or unreserved public lands.''

We disagree with the commenters. BLM did not identify specific standards because applicants can make a wide variety of disclaimer applications. The issuance of a disclaimer does not grant land to anyone. It merely documents that the United States has no valid interest in the land. Requirements for how and what an applicant must file are found in the existing regulations at 43 CFR 1864.1–2.

We also disagree that we should change our definition of ''lands.'' Often lands have been transferred from Federal to private ownership, but a residual interest in the lands remains with the Federal government either by design or error. The disclaimer of interest rule is in place to correct such errors if they are found to cause a cloud on a title.

Section 1864.1–3 Action on Application

Section 1864.1–3(a)(1) currently provides, in part, that the BLM will deny an application for a disclaimer if ''[m]ore than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States.'' This deadline was modeled after the statute of limitations in the Quiet Title Act, which also includes a disclaimer provision (28 U.S.C. 2409a(e)). The Quiet Title Act now provides that ''any civil action under this section, except for an action brought by a state, will be barred unless it is commenced within twelve years of the date upon which it accrued. Such action will be deemed to have accrued on the date the plaintiff or his predecessor in interest knew or should have known of the claim of the United States.'' (28 U.S.C. 2409a(g)).

As enacted in 1972, the Quiet Title Act subjected all parties, including states, to the 12-year limitation period. In 1986, Congress amended the Quiet Title Act to exempt states from this 12-year statute of limitations in most instances. However, BLM has not updated 43 CFR 1864.1–3(a), issued in 1984, to reflect the 1986 change in the Quiet Title Act. Thus, today's rule amends this section to be more consistent with the Quiet Title Act.

Today's rule adds language exempting states from the 12-year filing deadline to allow states, as we have defined this term in this rule, to apply for disclaimers of interest under FLPMA at any time. We also made editorial changes to this section and brought up-to-date a reference to another section.

Section 1864.1–4 Consultation With Other Agencies

The existing regulations at 43 CFR 1864.1–4 direct BLM to refer disclaimer applications to the affected Federal agency for comment before making a decision on the application. As a result of comments BLM added provisions to today's rule stating that if a surface management agency has a valid objection to an application, BLM will reject the application. If the application is approved by the surface management agency, then BLM can issue a recordable disclaimer of interest.

We specifically made the change in reponse to the U.S. Forest Service comments by clarifying in this final rule how BLM will handle disclaimer of interest applications for lands managed by another land managing agency.

IV. How Did BLM Fulfill Its Procedural Obligations?

E.O. 12866, Regulatory Planning and Review

This regulation is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866. Therefore it does not require an assessment of potential benefits and costs, nor does it require an explanation pertaining to the manner in which the regulatory action is consistent with a statutory mandate and, to the extent allowed by law, promotes the President's priorities and avoids undue interference with state, local, and tribal governments in the exercise of their governmental functions. Because this rule is not a ''significant regulatory action'' the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

Commenters asserted that the rulemaking is a significant regulatory action because it relates directly to R.S. 2477 claims and will, therefore, cause adverse impacts to the environment; presents novel legal issues; and is inconsistent with the actions of another agency.

We disagree and stand by our analysis that the rule is not a significant regulatory action. Today's rule does not change the basic process for issuing recordable disclaimers and will not have additional environmental impact, will better conform to existing statutes, and better explains how the disclaimer process relates to other agencies.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). The changes to the current rules will have no impact on an applicant's costs for filing or processing an application for a disclaimer of interest which currently consist of a one-time filing fee of $100 and fact-specific processing costs with provisions for a fee waiver.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This regulation is not a ''major rule'' as defined at 5 U.S.C. 804(2) because it will not have an annual effect on the economy greater than $100 million, nor will it result in major cost or price increases for consumers, industries, government agencies, or regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, because it will not result in state, local and tribal government, or private sector expenditures of $100 million or more in any one year. This rule will not significantly or uniquely affect small governments.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12360, BLM has found that the rule does not have significant takings implications. No takings of personal or real property will occur as a result of this rule. The rule broadens the opportunity for the United States to issue disclaimers of interest in land, thereby making it easier to remove clouds on title to certain lands. A takings implication analysis is not required.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact assessment. The rule does not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt state law. The rule broadens the opportunity for states and other entities to apply for a disclaimer of interest in land, thereby removing clouds on the title to certain lands.

A commenter believes the rulemaking will impact the public under Executive Order 13132 because the rulemaking would change Federal and state land ownership.

We disagree. Although states will gain an additional ability to apply for disclaimers because we are removing the states' 12-year filing deadline, no substantive changes in ownership would occur because recordable disclaimers may only be issued for

interests which the Federal government no longer claims.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM finds that this rule does not propose significant changes to BLM policy and that Tribal Governments will not be unduly affected by this rule.

The State of Alaska supported the proposed rule and asked if a disclaimer of interest could be applied to Indian trust or restricted Indian lands.

BLM will reject all applications for a disclaimer of interest on trust or restricted Indian lands (43 CFR 1864.1–3(b)(2) of today's rule). Indian trust lands are defined in 25 CFR 150.2(h) as ''an inclusive term describing all lands held in trust by the United States for Individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to the Federal restrictions against alienation or encumbrance, for all lands which are subject to the rights of use, occupancy, and/or benefit of certain tribes.'' For purposes of this part, the term ''Indian land'' also includes land for which title is held in fee status by Indian tribes and U.S. Government-owned lands under the Bureau of Indian Affairs jurisdiction. This rulemaking has no bearing on these lands.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

BLM has determined this rulemaking does not contain any new information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

BLM has determined that this rulemaking is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, under 516 Departmental Manual (DM), Chapter 2, Appendix I, Item 1.10, and has concluded that the rule does not meet any of the ten exceptions to the categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Under 516 DM, Chapter 2, Appendix 1, § 1.10, this rule is categorically excluded because it is procedural in nature, therefore its environmental effect is too broad, speculative or conjectural to analyze.

A commenter believes BLM was incorrect in asserting that the proposed rule is categorically excluded from review under NEPA, arguing that there are several exceptions requiring the proposed rule to undergo NEPA review, including the potential adverse effects on parks, recreation, wilderness, and refuge lands, and the proposed rule's potentially controversial environmental effects.

We disagree. BLM believes that the rule, as written, is exempt from NEPA for the reasons stated in the proposed rulemaking. It is not possible to determine the number of filings under the FLPMA provision, nor can BLM determine where such filings will be made.

Executive Order 13211, Action Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM finds that this rule will not have a significant adverse effect on the supply, distribution, or use of energy. The supply, distribution or use of energy will not be unduly affected by this rule.

Clarity of the Regulations

Each Federal agency is required to write regulations that are simple and easy to understand and to solicit comments and suggestions from the public on the readability of the rule.

A commenter stated the rulemaking was unclear because it does not mention R.S. 2477, although BLM's Questions and Answers and Press Release pertain specifically to R.S. 2477.

We disagree. This rulemaking pertains to the issues of recordable disclaimers and, therefore, we saw no need to address specific R.S. 2477 rights-of way types of recordable disclaimers in the preamble to the proposed rule. Our mention of R.S. 2477 in BLM's Questions and Answers and Press Release generated significant comments about the relationship of this rule to R.S. 2477, which we have addressed in today's preamble.

List of Subjects in 43 CFR Part 1860

Administrative practice and procedure, Public lands.

Dated: December 31, 2002.

Rebecca W. Watson,

Assistant Secretary of the Interior.

Accordingly, for the reasons stated in the preamble and under the authority of the FLPMA (43 U.S.C. 1740), BLM amends Subpart 1864 of Title 43 of the Code of Federal Regulations as set forth below:

PART 1860—CONVEYANCES, DISCLAIMERS, AND CORRECTIONS DOCUMENTS

Subpart 1864—Recordable Disclaimers of Interest in Land

1. The authority citation for subpart 1864 is added to read as follows:

Authority: 43 U.S.C. 1201, 1740, and 1745.

2. Amend Section 1864.0–5, by adding paragraph (h) to read as follows:

§ 1864.0–5 Definitions.

* * * * *

(h) *State* means ''the state and any of its creations including any governmental instrumentality within a state, including cities, counties, or other official local governmental entities.''

3. Revise § 1864.1–1 to read as follows:

§ 1864.1–1 Filing of application.

(a) Any entity claiming title to lands may file an application to have a disclaimer of interest issued if there is reason to believe that a cloud exists on the title to the lands as a result of a claim or potential claim of the United States and that such lands are not subject to any valid claim of the United States.

(b) Before you actually file an application you should meet with BLM to determine if the regulations in this subpart apply to you.

(c) You must file your application for a disclaimer of interest with the proper BLM office as listed in § 1821.10 of this title.

4. Revise § 1864.1–3 to read as follows:

§ 1864.1–3 Action on application.

(a) BLM will not approve an application, except for applications filed by a state, if more than 12 years have elapsed since the applicant knew, or should have known, of the claim of the United States.

(b) BLM will not approve an application if:

(1) The application pertains to a security interest or water rights; or

(2) The application pertains to trust or restricted Indian lands.

(c) BLM will, if the application meets the requirements for further processing, determine the amount of deposit we need to cover the administrative costs of processing the application and issuing a disclaimer.

(d) The applicant must submit a deposit in the amount BLM determines.

(e) If the application includes what may be omitted lands, BLM will process

it in accordance with the applicable provisions of part 9180 of this title. If BLM determines the application involves omitted lands, BLM will notify the applicant in writing.

5. Revise § 1864.1–4 to read as follows:

§ 1864.1–4. Consultation with other Federal agencies.

BLM will not issue a recordable disclaimer of interest over the valid objection of another land managing agency having administrative jurisdiction over the affected lands. A valid objection must present a sustainable rationale that the objecting agency claims United States title to the lands for which a recordable disclaimer is sought.

[FR Doc. 02–33147 Filed 12–31–02; 12:48 pm]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3484, MB Docket No. 02–20, RM–10368]

Digital Television Broadcast Service; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Central Michigan University, allots DTV channel *23 at Traverse City, Michigan. *See* 67 FR 6905, February 14, 2002. DTV channel *23 can be allotted to Traverse City in compliance with the geographic spacing criteria of Section 73.623(d) and the principle community coverage requirements of Section 73.625(a) at coordinates (45–10–40 N. and 85–05–57 W). Due to a short-spacing conflict, the Canadian government has concurred with the allotment of DTV channel *23 as a specially negotiated allotment limited to l kW ERP and 390 meter HAAT or the equivalent in order to avoid prohibited overlap in the direction of DTV channel 23B at Sault Ste. Marie, Ontario, Canada. With this action, this proceeding is terminated.

DATES: Effective February 3, 2003.

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. 02–20, adopted December 17, 2002, and released December 20, 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 Michigan, is amended by adding DTV channel *23 at Traverse City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–163 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3505; MB Docket No. 02–274, RM–10560; MB Docket No. 02–275, RM–10561]

Radio Broadcasting Services; Jasper, FL and Tigerton, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Powerline NA, Inc., allots Channel 298A at Jasper, Florida, as the community's first local FM transmission service. *See* 67 FR 63876, October 16, 2002. Channel 298A can be allotted to Jasper in compliance with the Commission's minimum distance separation requirements with a site restriction 2.2 kilometers (1.4 miles) northwest of the community to avoid a short-spacing to the vacant allotment site of Channel 299C3, Perry, Florida. The reference coordinates for Channel 298A at Jasper are 30–31–49 North Latitude and 82–57–58 West Longitude. The Audio Division, at the request of Starboard Broadcasting, Inc. allots Channel 295A at Tigerton, Wisconsin, as the community's first local FM transmission service. *See* 67 FR 63876, October 16, 2002. Channel 295A can be allotted to Tigerton in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.7 miles) northeast to avoid a short-spacing to the license sites of Station WLJY, Channel 293C1, Marshfield, Wisconsin, Station WJLW, Channel 294C3, Allouez, Wisconsin, and Station WUPM, Channel 295C1, Ironwood, Michigan. The reference coordinates for Channel 295A at Tigerton are 44–50–07 North Latitude and 88–56–41 West Longitude. Filing windows for Channel 298A at Jasper, Florida and Channel 295A at Tigerton, Wisconsin, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective February 3, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02–274 and 02–275, adopted December 18, 2002, and released December 20, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision 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.*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Jasper, Channel 298A.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Tigerton, Channel 295A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–169 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3420; MB Docket No. 02–225; RM–10517]

Radio Broadcasting Services; Crawfordville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 234A to Crawfordville, Georgia, in response to a petition filed by Ritz Radio. *See* 67 FR 53901, August 20, 2002. The coordinates for Channel 234A at Crawfordville, Georgia, are 33–31–18 and 82–56–52. There is a site restriction 3.7 kilometers (3.7 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 234A at Crawfordville will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective: January 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 02–225, adopted December 13, 2002, and released December 16, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Crawfordville, Channel 234A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–165 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3418; MB Docket No. 02–143; RM 10392]

Radio Broadcasting Services; Lebanon and Speedway, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reallots Channel 265A from Lebanon to Speedway, Indiana, as the community's first local aural transmission service and modifies the license for Station WYJZ(FM) to reflect the changes. *See* 67 FR 42216 (06/21/2002). Station WYJZ(FM), currently operating as a short-spaced station, will be able to operate as a fully spaced station and will eliminate two short-spacings. Channel 265A is allotted at Speedway at petitioner's requested transmitter site which is 4.9 kilometers (3.0 miles) southeast of the community. Coordinates for Channel 265A at Speedway are NL 39–46–10 and WL 86–13–45.

DATES: Effective January 30, 2003.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–143, adopted December 13, 2002, and released December 16, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by adding Speedway, Channel 265A and removing Lebanon, Channel 265A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–164 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 02–14165; Notice 1]

RIN 2127–AI85

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds, in part, to petitions for reconsideration of the amendments we made in December 2001 to our May 2000 Federal motor vehicle safety standard (FMVSS) No. 208 advanced air bag final rule. Because of the time constraints faced by vehicle manufacturers in certifying a portion of their fleet to the advanced air bag requirements, we are bifurcating our response. This document addresses those portions of the petitions that we believe are the most time sensitive or that address minor, easily resolved technical issues. In particular, we are responding to those portions regarding the length of time during which data will be collected during low risk deployment tests, a change in dummy positioning procedure for one of the driver position low risk deployment tests, and issues related to the air bag warning label and the telltale that indicates when the passenger air bag has been automatically suppressed. A second document addressing the remaining issues raised by the petitioners will be issued at a later date.

DATES: *Effective Date:* The amendments made in this rule are effective February 5, 2003.

Petitions: Petitions for reconsideration of the amendments made by this rule must be received by February 20, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lori Summers, Chief, Light Duty Vehicle Division, Rulemaking, NVS–112. Telephone: (202) 366–1740. Fax: (202) 493–2739. E-mail: *Lori.Summers@NHTSA.dot.gov.*

For legal issues, you may contact Rebecca MacPherson, Office of Chief Counsel, NCC–112. Telephone: (202) 366–2992. Fax: (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background: The Advanced Air Bag Final Rule

On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a final rule and an interim final rule to require advanced air bags (Docket No. NHTSA 00–7013; Notice 7) (May 2000 final rule). The rule amended FMVSS No. 208, Occupant Crash Protection, to require that future air bags be designed so that they create less risk of serious air bag-induced injuries than current air bags, particularly for small women and young children, and provide improved frontal crash protection for all occupants by means that include advanced air bag technology.

The issuance of the May 2000 final rule completed the implementation of our 1996 comprehensive plan for reducing air bag risks. The Transportation Equity Act for the 21st Century (TEA 21), which was enacted in 1998, required us to issue a rule amending Standard No. 208:

> to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

Eight petitions for reconsideration of the May 2000 final rule were submitted to the Agency (*see* Docket No. 7013). Four of the petitions were from manufacturers of vehicles or air bags. Petitions were also filed by three industry associations representing vehicle manufacturers, and by a coalition of four consumer groups. In addition, NHTSA received two requests for clarification within the time period for filing petitions and three comments that would have been considered petitions for reconsideration had they been timely filed. All submissions were addressed in the Agency response published in the **Federal Register** on December 18, 2001 that made several changes to the May 2000 final rule (66 FR 65376, Docket No. NHTSA 01–11110) (December 2001 final rule).

These changes included a number of refinements to the dummy positioning procedures for the low risk deployment tests and, to a lesser degree, for the automatic suppression tests. In the December 2001 final rule, the Agency also modified the period of time during which the injury criteria must be met for the low risk deployment tests from 300 milliseconds (ms) to 125 ms after initiation of the final stage of an air bag designed to deploy in a 26 km/h (16 mph) rigid barrier crash. We also corrected an error in the regulatory text of the May 2000 final rule regarding the exclusivity of the new advanced air bag warning label on the sun visor and clarified that information regarding air bags or seat belts may be placed elsewhere in the vehicle as long as the information in those warnings is consistent with the information contained in the required label. Additionally, the regulatory text concerning the telltale light required for automatic suppression systems was changed to be more consistent with the requirements of FMVSS No. 101, Controls and Displays. Other changes that are not the subject of today's rule were also made.

II. Petitions for Reconsideration

We have received eight petitions for reconsideration of the December 2001 final rule. These petitions were filed by the Alliance of Automotive Manufacturers (Alliance), Mitsubishi, Volkswagen, Honda, Porsche, DaimlerChrysler, Ford, and Toyota. Additionally, BMW and Ferrari filed petitions shortly after the deadline for filing petitions for reconsideration had passed. Under agency regulations (49 CFR 553.35(a)), late-filed petitions for reconsideration are treated as petitions for rulemaking. However, neither of these two petitions raised issues that had not also been addressed by the other timely petitioners for reconsideration. Thus, as a practical matter, the issues in the two petitions will be considered as part of the agency response to the timely-filed petitions for reconsideration. TRW submitted a request for clarification and a comment on one of the issues raised by all petitioners, namely the time-duration for meeting the injury criteria during the passenger-side low risk deployment tests. Several supplemental submissions were also submitted to the docket after the deadline for filing petitions for reconsideration.

In this document, we are responding to those portions of the petitions regarding the time duration for collecting injury criteria data during the low risk deployment tests, a change in dummy positioning procedure for one of the driver position low risk deployment tests, and issues related to the air bag warning label and the automatic suppression telltale. Only those portions of the petitions directly related to these matters will be discussed in this

document. The remaining issues will be addressed in a subsequent document.

III. Summary of Response to Petitions for Reconsideration

As noted above, today's rule addresses only those issues raised in the petitions for reconsideration that are likely to have an important, immediate impact on vehicle manufacturers or that correct inadvertent changes that were made to the regulatory text in the December 2001 final rule.

Two significant issues are resolved by this document. First, we address the time duration for collecting injury criteria data during the tests to determine whether a low risk deployment air bag system complies with the standard. We have decided to grant the petitioners' request that the period for the three-year-old and six-year-old low risk deployment tests end at 100 ms after the air bag first starts to deploy instead of 125 ms after the final stage of the air bag starts to deploy. The longer time duration for low risk deployment tests specified in the December 2001 final rule will continue to apply to the driver position low risk deployment tests and to the infant low risk deployment tests.

The second major issue involves the labeling requirements associated with all advanced air bag requirements. We have made changes to the current label, depicted in Figure 8 of the standard, and have decided to reinstate our prohibition against placing additional information regarding air bags on the sun visor. The current label will be allowed for vehicles certified to the advanced air bag requirements before September 1, 2003, although vehicle manufacturers may choose to use the new label, which is depicted in Figure 11, on those vehicles under the existing provision allowing early compliance. Notwithstanding the prohibition, we have also established a procedure under which a manufacturer may request permission to add design-specific information to the sun visor label with the Agency's approval. Today's rule also corrects an error in the regulatory text that suggested the new advanced air bag labels are only required for vehicles certified to the automatic suppression options.

Finally, the rule makes a correction to the chin-on-module low risk deployment test position, corrects a couple of errors related to the telltale requirement for vehicles certified to the automatic suppression requirements, and makes a few minor, non-substantive changes.

IV. Time Duration for Low Risk Deployment Tests

We adopted a specific period of time for meeting the injury criteria in the May 2000 final rule. In that rule, we required that all injury criteria be met for the first 300 ms of the test, a time period that we believed would encompass any air bag-related risk of injury. Several petitioners for reconsideration of that rule argued against adopting a 300 ms period for the low risk deployment tests.

While rejecting the recommendation made by the Alliance that injury criteria be met for 300 ms or until the dummy is no longer in contact with the air bag, whichever occurs first, as inherently non-objective, we did modify the test duration for the low risk deployment tests in the December 2001 final rule.

As discussed in that rule, the test duration for low risk deployment tests should accurately reflect the propensity of the deploying air bag to harm an occupant while it is deploying. Thus, we adopted a time duration for the low risk deployment test of 125 ms from the initiation of deployment of the final air bag stage that will fire in a 0–26 km/h (16 mph) crash. We believed this time frame would adequately measure air bag-related injuries without reflecting injuries due to secondary vehicle interior impacts (referred to below as ''secondary impacts'') that are unrelated to air bag deployment. We noted that we intend to monitor our test data to determine whether the specified time period is, in fact, sufficient to include all air bag-related injuries, leaving open the possibility of increasing the time duration if needed. We also noted that the 300 ms time duration remains in full effect for all barrier tests.

In October 2001, the Alliance petitioned NHTSA to limit the time period to 100 ms from the initial deployment of the air bag. Alternatively, it suggested developing an algorithm that would determine when the forces imposed on the dummy by the air bag no longer significantly influences the movement of the dummy. In a supplemental submission, dated April 29, 2002, the Alliance dropped its support of this alternative approach.

The Alliance argued that both the original 300 ms time frame and the new 125 ms after the initiation of the final stage of air bag deployment effectively prevent vehicle manufacturers from certifying compliance with the advanced air bag requirements using low risk deployment technologies. It stated that both time periods capture non-representative secondary impacts with vehicle interior components (primarily the seat back on the passenger side). It argued that these interior vehicle impacts are artifacts of the test, which is static, and are not representative of what happens in real world crashes. It provided sled test data simulating a dynamic crash test compared to a low risk deployment test, suggesting that the interactions of test dummies with the vehicle's interior components during dynamic tests are not significant.

The Alliance also claimed that the final stage of most multi-stage air bag systems that is not deployed in a crash to provide occupant protection is only deployed to expense the remaining air bag propellant, not to provide any additional protection for the affected occupant. It stated that this final ''dispensing'' stage would generally expense approximately 100 to 300 ms after the initial deployment of the air bag, a time delay which, it argued, is sufficiently late to prevent any risk of air bag-related injury. In addressing the agency's concerns with the injury potential of a secondary impact, the Alliance noted that it did not believe NHTSA's reliance on reports of secondary impacts in existing special crash investigation (SCI) cases was warranted since those cases involved air bags that would not meet the low risk deployment criteria. Accordingly, it did not believe the SCI cases were indicative of future air bag performance. Finally, the Alliance stated that a time duration of 125 ms from the initial deployment of the air bag was too long to eliminate injuries attributable solely to secondary impacts.

Toyota, Mitsubishi, DaimlerChrysler, Honda, Volkswagen, and Porsche all supported the Alliance request to end the period during which data are collected for compliance purposes at 100 ms after the initial deployment of the air bag. DaimlerChrysler also suggested that the seat back be adjusted to its fully reclined position (or the seat be removed) to avoid any possibility of a secondary impact.[1] Honda suggested an alternative requirement under which the collection of data for compliance purposes would cease 10 ms after the dummy head no longer interacted with the air bag. It maintained that the maximum injury values, other than those related to secondary impacts, generally occurred during dummy head interaction with the air bag or very shortly (*i.e.*, within 10 ms) thereafter,

[1] In October 2001, DaimlerChrysler submitted a petition for rulemaking asking, in part, that the time duration for data collection be less than 100 ms after initiation of air bag deployment. However, in its petition for reconsideration, it supported the proposal set forth by the Alliance.

and therefore asked us to limit the period during which the injury criteria must be met and data are collected for the low risk deployment tests to 10 ms after dummy interaction with the air bag ceases. This approach had been presented earlier by the Alliance in an October 2001 petition for rulemaking. Volkswagen and BMW suggested an alternative means of limiting the collection of compliance data would be to review the test video and data traces to separate air bag-induced injury readings from secondary impacts. They stated that such a method would most effectively ensure that all air bag-related injuries were captured without penalizing manufacturers for secondary impacts. BMW noted that NHTSA has established a precedent for using film analysis to determine compliance in FMVSS No. 201, Occupant protection in interior impact. TRW offered a similar alternative, under which film and data channel analyses would be used to limit the collection of compliance data. It also advocated a 300 ms time-frame for all rear-facing child seat testing. Autoliv advocated a much more basic approach under which NHTSA could make a case-by-case determination that the secondary impact was unrelated to the air bag.

This is a complex issue. As we noted in the preamble to both our May 2000 and the December 2001 final rules, we do not believe that all dummy contact with the vehicle interior would necessarily be the result of dummy interaction with an overly aggressive air bag. This is because a dummy subjected to the deployment of any air bag in a low risk deployment test will continue to move rearward until it strikes some object, and because the low risk deployment test does not take into account the forward momentum of the dummy that would typically be present in a real world crash in which the frontal impact air bags deploy. For these reasons, we are reluctant to retain the existing compliance data collection period, particularly because it may effectively preclude manufacturers from complying with the rule through the use of low risk deployment technologies. Nevertheless, we remain concerned that an air bag propelling the dummy backward with excessive force could result in secondary impacts relatively early in the crash event. These new low risk air bag technologies remain relatively untested by NHTSA, and we are somewhat dependent on the manufacturers' experience in the testing and development of their own systems.

Accordingly, we have decided to limit the data collection for compliance purposes to 100 ms after initial deployment of the air bag for systems that are certified to either S21.4 (3-year-old) or S23.4 (6-year-old), as requested by the Alliance and supported by other petitioners. All injury measurements recorded during that time that exceed the allowable values, regardless of the source of injury, will be considered noncompliances. We continue to believe that setting a specific time period is the simplest, most appropriate, and most objective way to determine which data to collect for compliance purposes. The basis for our decision is set forth below. However, as discussed in the December 2001 final rule, we will actually record the dummy injury measurements for a longer time period dependent upon the data collection system. If there is any indication that peak injury measurements recorded after 100 ms are the result of an air bag's aggressiveness, we may choose to initiate rulemaking to increase the period of time that data will be considered for compliance purposes.

The primary thrust of the Alliance's petition is that, in a real world crash, a child would have sufficient forward momentum relative to the vehicle, and thus experience a lower change in velocity due to the air bag interaction, to prevent serious injuries resulting from secondary impacts with the interior of the vehicle. Thus, the high injury readings associated with secondary impacts in the static low risk deployment tests (primarily high neck injury readings) are artifacts of those tests and do not represent a real world condition. The Alliance presented one set of sled test results, comparing one low risk deployment test (6-year-old dummy in position 1) to a 26 km/h (16 mph) dynamic sled test to support its position.

We agree that the rebound velocity of a dummy in the static low risk deployment test does not replicate the rebound velocity of an out-of-position occupant in a real world crash in which the occupant moves forward as a result of vehicle braking and crash dynamics. The forward momentum of the occupant in such a crash will reduce the velocity with which the occupant is thrown back into the seat. The amount of this forward momentum (and the resulting reduction in rearward momentum) is impact velocity-dependent. In low speed crashes, the forward momentum will be less than in higher speed crashes. Since air bags may be designed to deploy at impact speeds considerably less than the 26 km/h (16 mph) used in the Alliance sled test, we are uncertain that forward momentum alone will be sufficient to prevent rebound injuries that are the result of the air bag's propelling an individual rearward. Likewise, our experience with the SCI data indicates that secondary impacts are not limited to seat backs, but could be into the B-pillar, the door, or even the header. However, the SCI cases are inconclusive as to whether or not the secondary impacts result in more serious injury than those produced by the air bag.

The Alliance also suggested that the agency's reliance on SCI data to justify our concern that secondary impacts could be the result of air bag interaction depended on old air bag designs that could not meet the low risk deployment requirements. The Alliance's point is well taken. We note that no vehicles in the SCI database were designed to meet the advanced air bag requirements. Indeed, to the best of our knowledge, there is only one SCI case of a ''lower powered'' (*i.e.,* model year 1998 or later) air bag-equipped vehicle that resulted in a critical injury (AIS 5) and was also reported to have seat back contact. That case involved a 1999 Ford Contour. We do not believe the passenger air bag in that vehicle would be sufficiently benign to meet the low risk deployment requirements. We also have some concerns about our ability to attribute the serious injuries to seat back contact, as the subject case involved a crash in which the delta-V has been determined to be around 48 km/h (30 mph).

The Alliance also indicated that the typical low risk deployment systems that are likely to be used in future vehicles would consist of an initial, benign deployment with a secondary ''expensing stage'' that would occur at least 100 ms after the initial deployment. It maintained that this ''expensing stage'' would occur so late in the crash event that it could not be the source of air bag interaction or rebound injury. It also provided data using an inflator designed to expense 40% of the air bag's propellant initially and 60% secondarily (40/60 air bag design). In that instance, the secondary deployment occurred 200 ms after the initial deployment and did not result in any excessive injury response measurements at the end of the crash event. As noted in the December 2001 final rule, our concern is with 40/60 air bag designs for which the second deployment has the propensity to cause injury. We do not find persuasive the Alliance's contention that the second stage of deployment will always be benign, but believe that injury measurement assessment for 100 ms will ensure that a second stage deployment does not occur during significant occupant engagement with the air bag.

Finally, the Alliance stated that a 125 ms fixed time duration is too long to exclude secondary impacts. To the extent we believe the majority of secondary impacts are not representative of what happens in real world crashes, the test duration should be sufficiently short to limit significantly the potential for secondary impacts while being of sufficient duration to capture the full air bag deployment. We believe a 100 ms time duration will capture the full air bag deployment and induce manufacturers to reduce the dummy rebound velocities into the seat back and cap the rebound velocity to some degree. There is no evidence that suggests that a 125 ms data collection would reduce the likelihood of injuries more than a 100 ms collection.

We agree with manufacturers that high injury measurements due to secondary impacts can be an artifact of the low risk deployment test. The 100 ms time frame adopted today will minimize the likelihood that a vehicle occupant will be thrown into the seat back or other vehicle component prior to 100 ms, as vehicle manufacturers will need to ensure that their air bags are sufficiently benign to avoid such contacts during that time frame. This is because any failure of the injury criteria, regardless of whether it is the result of direct air bag interaction or a secondary interaction with another vehicle component, will be considered a noncompliance. It is for this reason that we are denying DaimlerChrysler's petition for an explicit exclusion of air bag stages that are not required to provide occupant protection and for performing the test with the seat back fully reclined or removed. However, as noted above, we will continue to monitor the test results, and initiate rulemaking if we determine that injury measures beyond 100 ms are due to overly aggressive air bags.

Vehicle manufacturers have not demonstrated that secondary impacts are a compliance problem on the driver side of the vehicle or with a rear-facing child restraint on the passenger side. Additionally, unlike the 3-year-old and 6-year-old dynamic tests relied on by the Alliance to support its position that secondary impacts are a test anomaly, there will not be a significant amount of forward momentum relative to the vehicle in a dynamic test with an infant dummy in a rear-facing child restraint. The infant dummy is restrained in a rear-facing child restraint that is coupled to the vehicle chassis via the vehicle seat belt system. Thus, the static test condition is more representative of the real world crash event. Accordingly, we are retaining the specification that data be collected for compliance purposes in S19.3 (12-month-old) and S25.3 (driver-side) for 125 ms after initiation of the final stage of deployment for crashes up to 64 km/h (40 mph) and 26 km/h (16 mph), respectively.

We are rejecting the other suggestions offered by petitioners because we believe they are insufficiently objective. Honda's suggestion that data collection for compliance purposes end 10 ms after head interaction with the air bag ceases suffers from the same lack of objectivity as the Alliance petition that we denied in the December 2001 final rule. It is simply not possible to determine with any assurance exactly when that interaction ceases. The suggestion of a film analysis is likewise impractical. Autoliv's suggestion that NHTSA make a case-by-case determination as to when the secondary impact is air bag-related would likely result in significant debate and pose legitimate concerns about objectivity, repeatability, and enforceability.

We have changed S4.11(b) of the regulatory text to specify injury criteria will be considered for ''100 milliseconds after the initial deployment of the air bag'' rather than ''100 milliseconds after the air bag is signaled to deploy.'' The reason for this change is to be more precise about when the 100 ms time-frame begins. Manufacturers may, for very valid reasons, build time delay circuitry into their air bag systems. If the test duration began at the signaling of air bag deployment, the data acquisition period would be shortened by the period of the delay. Changing the regulatory text to ''initial deployment of the air bag'' is intended to capture that moment in time when the chemical or other process begins to inflate the air bag. If there is no designed delay built into the electrical circuitry, then the signal for air bag deployment and the initiation of deployment will effectively be coincident.

V. Test Procedure for the Driver Air Bag Systems

As part of the December 2001 final rule, the agency made several changes to the regulatory text governing dummy positioning procedures. In many instances, these changes were intended to be substantive in nature. For example, we changed the location for positioning the dummy chin on the steering wheel in the driver chin-on-rim test (position 2) because we believed the change would lead to a more repeatable test procedure and would minimize the risk that the dummy chin would become lodged over the steering wheel, potentially distorting the dummy kinematics.

However, many of the changes were made purely to improve the logic of how the test was to be performed and to create greater consistency among the various tests. For example, changes were made in the sequencing of the test procedure so that one could follow the procedure step-by-step. Likewise, terminology was made more uniform among the various tests. The agency did not intend these changes to have a substantive effect. Accordingly, the preamble to the December 2001 final rule did not discuss the changes.

Mitsubishi, Volkswagen, and Autoliv stated in their petitions that one of the changes to the driver chin-on-module test (position 1) (S26.2.6) made a substantive change to the test procedure that was not justified, or even discussed in the preamble. Follow-up letters by the Alliance, Ford and GM reiterated this concern. The position aligns the chin with the center of the area where the air bag deploys. The original position aligned the chin with the top of the air bag module. Petitioners have argued that the new specification lowers the dummy head position and could make the test more stringent and unrealistic. Additionally, Autoliv and Ford asked if the seat height could be adjusted to achieve the desired dummy height.

Petitioners are correct that the change was not discussed. It was intended to create consistency between this test and other tests in which a portion of the dummy was to be positioned in alignment with the place in the vehicle where the air bag initially deploys. It was not intended to have a substantive effect. We do not know at this time whether lowering the dummy head a couple of inches will have a significant effect on recorded injury measurements. However, we recognize it could. Since no substantive change was intended, we have reverted back to the positioning language that was in the May 2000 final rule. This language places the chin on the top of the air bag module. It also states that the dummy height can be adjusted using either the seat height adjustments or spacer blocks. All other changes to the chin-on-module positioning procedure adopted by the December 2001 final rule are retained, at least at this time. However, other changes may be made in our second response to the petitions for reconsideration.

VI. Issues Related to Warning Labels and Telltale Requirements

A. Warning Labels

In the May 2000 final rule, we added a new warning label that must be used in vehicles with advanced air bags to replace the warning label currently required. The warning on the new label deleted the earlier label's statement: ''Never put a rear-facing child seat in the front'' in recognition that the advanced air bag requirements are intended specifically to minimize the risk related to air bag deployments. We also removed the statement on the label that is required in earlier motor vehicles that one should sit as far away from the air bag as possible because while this information is helpful, we did not believe it merited overcrowding the label. We added an instruction to read the vehicle owner's manual to learn more about the advanced air bag systems in the vehicle.

We also stated in the preamble that we would not prohibit additional labels on the sun visor that provided design-specific information on how to use a vehicle's advanced air bag technology. As stated in the preamble to the May 2000 final rule, we intended to allow additional, design-specific information on the sun visor and near the new air bag warning label. However, the amendments to the regulatory text mistakenly maintained the existing prohibition against adding additional information on the sun visor.

Accordingly, in the December 2001 rule, we amended the regulatory text to clarify that a label with such design specific information could be placed, at the manufacturer's option, on the sun visor alongside the air bag warning label. Alternatively, the manufacturer could determine that an additional label placed elsewhere in the vehicle, either permanently or temporarily, could best inform vehicle occupants about a particular characteristic of the vehicle's air bag system. We noted that advanced air bag systems are different from traditional air bag systems in that there is likely to be a variety of advanced air bag systems with differing and/or unique design characteristics. Thus, there may be instances in which a manufacturer determines that particular information should be conveyed regarding vehicle occupant behavior as it affects the performance of that vehicle's air bag system. We believe that the owner's manual alone may not be an adequate means of communicating that information to the vehicle owner and chose not to foreclose such communications through our rule.

No change was made to the regulatory text regarding the placement of labels elsewhere in the vehicle because historically there has been no express prohibition against labels that convey specific, accurate information about air bags or seat belts in locations other than the sun visor. However, we did amend the regulatory text to clarify that any additional labels, regardless of where they are placed in the vehicle, cannot be confusing or misleading when read in conjunction with other labels required by this or other standards.

The Alliance petitioned NHTSA to amend the labeling requirements of the December 2001 final rule in three respects. First, it asked NHTSA to reinstate its prohibition against other labels regarding air bags or seat belts on the sun visor. It claimed that we had not provided an adequate justification for reversing the position we adopted in 1993 that additional information on the sun visor would contribute to information overload for the consumer, resulting overall in a less effective warning. Second, it petitioned the agency to reconsider its position on permitting other labels elsewhere within the vehicle interior (*i.e.*, not located on the sun visor), urging us to adopt a blanket prohibition on additional air bag-related labels within the vehicle interior. Finally, it asked that the advanced air bag label be modified by adding a bulleted statement discouraging front seat installation of rear-facing infant seats.

In its supplemental submission, the Alliance suggested additional changes that it believes would strengthen the required label. In its petition, the Alliance also noted an apparent error in the regulatory text that only mandated the use of the new label in vehicles with automatic suppression systems. DaimlerChrysler raised similar concerns. In addition, DaimlerChrysler noted an incorrect reference in the regulatory text governing labels to a previous section of the regulation that had been repealed. That change has been made.

On April 26, 2002, GM requested that the revised effective date for any new label adopted by NHTSA be no sooner than September 1, 2003, with early compliance permitted. This request was made because GM is currently producing vehicles certified to the advanced air bag requirements which have the label required by the May 2000 and December 2001 final rules. The Alliance reiterated GM's request in its supplemental submission.

NHTSA always intended the new advanced air bag label, depicted in Figure 8, to be required in all vehicles certified to the advanced air bag requirements. Due to an error, the amended regulatory text that was adopted in the December 2001 final rule stated that the new label was only required for systems that use automatic suppression systems. We have amended the text to require that the required label be placed in all vehicles certified to the advanced air bag requirements, regardless of the technology used to meet the requirements.[2]

We have decided to change the required label for vehicles certified to the advanced air bag requirements. This new label is depicted in Figure 11. It differs from the label in Figure 8 in that it includes a bullet statement that states ''never put a rear-facing child seat in the front''. The bullet will not be required in those vehicles that meet the requirements for an air bag on-off switch, *i.e.*, the vehicle has no rear seat or a rear seat that is too small to accommodate a rear-facing child restraint. Although the advanced air bag systems are intended to minimize the risk of injury or death to infants in rear-facing child restraints, the only means to completely eliminate the risk is to never place a child or infant in a rear-facing child seat in the vehicle's front seat. We believe it is important to continue to highlight the especially high risk of air bag-related injury or death to children in rear-facing child restraints and, indeed, to continue to educate the public about the need to ensure that all children ride properly restrained in the back seat, since this is the safest place for children, irrespective of air bag risks.

We have not made the other changes advocated by the Alliance, namely the replacement of the phrase ''even with advanced air bags'' with the phrase ''death or serious injury can occur'' and the addition of the qualifier in the first bullet that the referenced children are ''children 12 and under.'' As noted above, it is critical that vehicle occupants understand how their advanced systems work if they are to provide consistent protection—particularly those systems, such as automatic suppression, whose effectiveness could be directly affected by occupant behavior. By highlighting

[2] As a practical matter, we do not believe any manufacturers will use an advanced air bag system that does not utilize an automatic suppression system for rear-facing child restraints, at least in the near future. Accordingly, all vehicles certified to the advanced air bag requirements would have the required label. However, at some point in the future manufacturers may choose to meet all of the passenger air bag requirements through some technology other than automatic suppression. Under the regulatory text erroneously adopted in the December 2001 final rule, no advanced air bag label would be required for those vehicles.

the advanced air bag features on the warning label, we believe vehicle owners will be more likely to heed the final bullet on the label, which is to consult their owner's manual for full details about the advanced air bag system.

We have decided against adding the ''12 and under'' qualifier because we believe the qualifier has served its originally intended purpose, which was to educate the public to the size of occupant that may be at risk from an air bag deployment. We will continue to use the qualifier in our educational literature, and continue to believe it is a useful tool for helping distinguish those particularly at risk, but have chosen in the interest of brevity and clarity to make reference to ''children'' on the sun-visor label rather than ''children 12 and under.''

We are granting GM's request that the new label not be required until September 1, 2003, the first day of the phase-in implementing the advanced air bag requirements. This should provide vehicle manufacturers sufficient time to order and install the new labels without penalizing them for early compliance with the advanced air bag requirements. The current label will be allowed for vehicles certified to the advanced air bag requirements before September 1, 2003, although vehicle manufacturers may choose to use the new label depicted in Figure 11 on those vehicles under the existing provision allowing early compliance.

As discussed above, the Alliance seeks reinstatement of a prohibition against supplemental air bag information on sun visors and the adoption of a prohibition against such information anywhere in the occupant compartment. The Alliance argues that these actions are necessary to prevent problems of dilution of message and information overload. It argues further that these problems are as large today as they were in the mid-late 1990s at the height of the air bag injury problem.

The question of whether information overload may tend to dilute the message should be considered in light of changing technology and maturing communication needs. In the rulemakings addressing the air bags of the mid 1990s, the agency focused on the twin messages of moving away from air bags and properly using seat belts and other restraints. In considering what messages should be placed on the label, the Agency recognized that, from the point of view of occupant behavior, all airbag systems of that generation operated similarly. Vehicle occupants could not control how or whether an air bag would deploy, but could control whether they were properly seated within the vehicle and properly restrained.

The messages of the 1990s remain critical. The incorporation of technologies to minimize the risks of air bags to occupants should not detract from the primary message that proper occupant seating and restraint use are the most critical factors in minimizing air bag induced injuries. However, the communication needs surrounding advanced air bags, while including the same needs as before, also involve additional complexities. The advent of advanced air bag technology may include air bag systems that respond differently based on the location or characteristics of a particular occupant. While the owner's manuals should contain detailed descriptions of each particular airbag system and how an occupant can best utilize it, the Agency remains convinced that there is benefit to permitting such information to be visible to occupants while riding in the vehicle.

In the December 2001 final rule we tried to balance the potential need for additional design-specific information with the possibility of confusion by prohibiting labels with the potential to confuse or mislead a consumer when read in conjunction with the required label. The Alliance argues that the balance we tried to strike eliminates or reduces the benefits of consistency and repeated exposure that led us originally to mandate particular words and format and to avoid the possibility of diluting these important messages through too many or differing messages.

We agree that a better balance can be struck. While the prohibition against potentially confusing or misleading labels remains, we will continue to permit manufacturers to add design specific information to their sun visor labels. However, to avoid the possibility of information overload, manufacturers must first seek the Agency's approval and may place additional design specific information on the label only after the Agency has granted them permission to do so.

We have set up a procedure under which a vehicle manufacturer can ask for agency authorization to add specific language to the required sun visor warning label addressing the air bag system's unique features. The agency will only authorize or reject the label submitted by the manufacturer. It will not make any judgment as to whether one or more of a variety of labels best prevents information overload, or whether the new information best addresses a particular air bag risk, and it will not suggest alternative language if it rejects a manufacturer's request. Moreover, the agency will not verify or vouch for the accuracy of the information. The agency decision will be limited to a determination that the additional information is not confusing or misleading when the entire label is read as a whole and does not result in information overload; that is to say, the label is not conveying so much information that it is unlikely to be read or taken seriously. We believe this procedure will allow for the provision of design-specific warnings without diminishing the label's effectiveness due to information overload.

In order to obtain NHTSA's authorization, the manufacturer's proposal must meet the following criteria:

- The information that would be added must be design-specific and not applicable to all or most air bag systems;
- The additional information must address situations in which foreseeable occupant behavior can affect air bag performance; and
- The manufacturer's request must provide a mock-up of the label with the specific language that would be added to the label.

Although this procedure places a burden on the agency to determine what constitutes information overload, we believe it will allow us to control the potential for information overload without substituting our judgment for the manufacturer's as to what information vis-á-vis a particular system is most important or germane. Because the information will be specific to the implementation of a particular air bag system in a particular vehicle, and not applicable to all or most airbag systems, we do not believe public comment would be helpful or necessary before making the determination.

The Alliance also requests that we further prohibit any other labels or information elsewhere in the interior compartment of the vehicle. Standard No. 208 has not historically contained any such express prohibition. This lack has not led to increasing numbers of labels and confusing messages, perhaps because the question of whether labels could be placed elsewhere in the vehicle had not been debated. While we do not today extend the prohibition throughout the occupant compartment, should information overload from such additional labels threaten to become a problem, we may reconsider this decision.

The procedure through which additional information can be placed on the sun visor label does not apply to additional labels or information placed elsewhere in the interior of the vehicle.

However, our position on this matter should not be interpreted as a determination by us that the additional labels are needed or even particularly helpful. Rather, our decision reflects our belief that while the sun visor label is the best and most important way to communicate with the public, manufacturers should have the option of including additional information in the occupant compartment, on either a temporary or permanent basis, if they deem it appropriate to do so.

B. Telltale Requirements

The May 2000 final rule required a telltale for vehicles with automatic suppression systems. The telltale has a specified message and must be positioned in a location forward of and above the H-point of the driver's and passenger's seat in their forwardmost position. The final rule allowed for multiple levels of illumination as long as the telltale remains visible at all times to front-seat occupants of all ages. The agency was petitioned to revise the May 2000 requirement that the telltale be visible to occupants of all ages, and to apply the requirements of Standard No. 101. We also received requests that the regulatory text be clarified to assure that the telltale would not be obstructed by a rear-facing child restraint, and that manufacturers be allowed to use the abbreviation ''pass'' in lieu of ''passenger'' in the message text. Based on a review of these petitions, we made changes to the regulatory text in the December 2001 final rule that brought the telltale requirements more in line with the requirements of FMVSS No. 101, that relaxed the message requirement to allow an abbreviation of ''passenger,'' and that required the telltale be placed so that rear-facing child restraints could not obscure it.

In its petition for reconsideration, the Alliance argued that the requirement that the telltale not be blockable by a rear-facing child restraint was too broad, although it supported the premise that a properly installed child restraint should not obscure the telltale. It maintained that the new requirement would make it necessary for manufacturers to test visibility using all possible child seats. It urged the agency to limit the requirement to those child seats listed in Appendix A of the standard.

DaimlerChrysler requested additional flexibility in the wording of the required telltale message. Specifically, it has asked that manufacturers be allowed to use ''pass.'' rather than ''pass'' or ''passenger,'' and that it be allowed to use ''airbag'' rather than ''air bag''. It stated that it believes these changes would better clarify the telltale, particularly since ''air bag'' is generally spelled as a single word outside of the United States and Canada. It also requested that it be allowed to use lower case letters.

In a request for clarification, Jaguar asked whether it was required to have the required telltale message backlit or otherwise illuminated, a result it said was necessitated by the regulatory text adopted in the December 2001 final rule.

We believe the Alliance position on the telltale visibility has merit. Our primary concern is that a correctly installed child restraint should not restrict the visibility of the telltale. The original language, as adopted in the May 2000 final rule, required the telltale not be located in a position where the temporary or permanent storage of an object could obscure the telltale from either the driver's or right front passenger's view. The language was amended in the December 2001 final rule at the request of DaimlerChrysler. We agree that the placement of a child restraint would not necessarily be considered temporary or permanent storage of the restraint. The change was intended to address a likely condition that was not sufficiently described, not to impose any additional burden on the vehicle manufacturers. As noted by the Alliance, NHTSA does not require vehicle manufacturers to certify compliance of their automatic suppression systems using every child restraint on the market. While we expect these systems to work with all available child restraints, requiring manufacturers to actually demonstrate compliance with all child restraints would be unwieldy. This issue was discussed thoroughly in the May 2000 final rule. We believe it would be inappropriate to impose a greater burden on manufacturers vis-á-vis child restraints and telltale visibility than we have imposed on them for the actual suppression device. Accordingly, the regulatory text has been amended to reference only those child restraints in Appendix A that are designed to be installed in a rear-facing mode.

We are denying DaimlerChrysler's request that manufacturers be provided with greater latitude in meeting the telltale's specified form and format requirements. The current requirements are not onerous and mirror the requirements that have been in place for manufacturer-installed air bag on-off switches since 1995. We have already accommodated the manufacturers' space concerns, as well as their concerns regarding the sale of vehicles in Canada or Europe by allowing the abbreviation of ''passenger.'' Additionally, while it is true that the term ''air bag'' is typically spelled as a single word outside of the United States and Canada, we note that these vehicles are manufactured for the U.S. market. While manufacturers may choose to export vehicles with advanced air bag systems to other countries, those vehicles will not have to meet the requirements of FMVSS No. 208. We also note that only Canada and the United States have adopted any advanced air bag requirements. The changes made in the December 2001 final rule adequately address the U.S. and Canadian markets.

As noted by Jaguar, the changes made in the December 2001 final rule had the effect of requiring the telltale message to be backlit or otherwise illuminated, even though the regulatory text specifically allows telltales that are not backlit. As noted above, the telltale requirements for automatic suppression systems were based on the existing telltale requirements for air bag on-off switches found at S4.5.4. We note that the earlier rule, published in the **Federal Register** on May 23, 1995 (60 FR 27233), directly addressed the issue raised by Jaguar. In that rulemaking, NHTSA had originally proposed that the identifying message be located on the telltale, *i.e.*, the language would be backlit. In the final rule, we amended the proposed regulatory language to allow the required message to be either on the telltale or adjacent to it (within 25 mm). We stated that we believed having the required message adjacent to the telltale would be as effective a means of informing the driver or passenger of the purpose of the telltale as having the words located directly on the telltale. The same rationale applies to the telltale requirement for vehicles with automatic suppression systems.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' Although this document amends the agency's May 2000 final rule, which was economically significant, NHTSA has determined that this document does not affect the costs and benefits analysis for that final rule. Readers who are interested in the overall costs and benefits of advanced air bags are referred to the agency's Final Economic Assessment for the May 2000 FMVSS

No. 208 final rule (NHTSA Docket No. 7013). This rulemaking document has also been determined not to be significant under the Department's regulatory policies and procedures. The amendments made by this document impose no additional costs on manufacturers. Their impacts are so minimal that a full regulatory evaluation is not merited.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action will not have a significant economic impact on a substantial number of small businesses because it does not significantly change the requirements of the May 2000 final rule or the December 2001 final rule. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule should only slightly affect the price of new motor vehicles, if at all.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

The final rule is not intended to preempt state tort civil actions, except that the required labels must contain the required text, and no additional text (unless approved by the agency in response to a manufacturer request), and any additional labels cannot be misleading or confusing, as specified in the regulatory text.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). While the May 2000 final rule is likely to result in over $100 million of annual expenditures by the private sector, today's final rule makes only small adjustments to the December 2001 rule, which, in turn, made only small adjustments to the May 2000 rule. Accordingly, this final rule will not result in a significant increase in cost to the private sector.

F. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not establish any new information collection requirements. The new label, depicted in 49 CFR 571.208, Figure 11, merely replaces the label currently depicted in 49 CFR 571.208, Figure 8. Since the contents of both labels are standardized, neither label constitutes an ''information collection.''

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Standard No. 208 is extremely difficult to read as it contains multiple cross-references and has retained all of the requirements applicable to vehicle of different classes at different times. Because portions of today's rule amend existing text, much of that complexity remains. Additionally, the availability of multiple compliance options, differing injury criteria and a dual phase-in have added to the complexity of the regulation, particularly as the various requirements and options are accommodated throughout the initial phase-in. Once the initial phase-in is complete, much of the complexity will disappear. At that time, it would be appropriate to completely revise Standard No. 208 to remove any options, requirements, and differentiations as to vehicle class that are no longer applicable.

J. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [3] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or

[3] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NHTSA as ''a performance-based or design-specific technical specifications and related management systems practices. They pertain to products and processes, such as size, strength, or technical performance of a product, process or material.''

otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The agency is not aware of any new voluntary consensus standards addressing the changes made to the May 2000 final rule or the December 2001 final rule as a result of this final rule.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended as follows:

A. By removing the introductory text to S4.5.1,

B. By revising S4.5.1 (a)(b), and (c), S4.11, S19.2.2, and S26.2.6, and

C. By adding Figure 11 to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

(a) *Air bag maintenance or replacement information.* If the vehicle manufacturer recommends periodic maintenance or replacement of an inflatable restraint system, as that term is defined in S4.1.5.1(b) of this standard, installed in a vehicle, that vehicle shall be labeled with the recommended schedule for maintenance or replacement. The schedule shall be specified by month and year, or in terms of vehicle mileage, or by intervals measured from the date appearing on the vehicle certification label provided pursuant to 49 CFR Part 567. The label shall be permanently affixed to the vehicle within the passenger compartment and lettered in English in block capital and numerals not less than three thirty-seconds of an inch high. This label may be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor. If some regular maintenance or replacement of the inflatable restraint system(s) in a vehicle is recommended by the vehicle manufacturer, the owner's manual shall also set forth the recommended schedule for maintenance or replacement.

(b) *Sun visor air bag warning label.* (1) Except as provided in S4.5.1(b)(2), each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 6a or 6b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(1)(i) through S4.5.1(b)(1)(iv).

(i) The heading area shall be yellow with the word ''WARNING'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm (1.2 in) in diameter.

(iv) If the vehicle does not have a back seat, the label shown in Figure 6a or 6b may be modified by omitting the statements: ''The BACK SEAT is the SAFEST place for children.''

(2) Vehicles certified to meet the requirements specified in S19, S21, or S23 before September 1, 2003 shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown either in Figure 8 or Figure 11 of this standard, at the manufacturer's option, and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iv).

(i) The heading area shall be yellow with the word ''WARNING'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 in) in length.

(iv) If the vehicle does not have a back seat, the label shown in the figure may be modified by omitting the statement: ''The BACK SEAT is the SAFEST place for CHILDREN.''

(v) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in the figure may be modified by omitting the statement: ''Never put a rear-facing child seat in the front.''

(3) Vehicles certified to meet the requirements specified in S19, S21, or S23 on or after September 1, 2003 shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in Figure 11 of this standard and shall comply with the requirements of S4.5.1(b)(3)(i) through S4.5.1(b)(3)(iv).

(i) The heading area shall be yellow with the word ''WARNING'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 in) in length.

(iv) If the vehicle does not have a back seat, the label shown in the figure may be modified by omitting the statement: ''The BACK SEAT is the SAFEST place for CHILDREN.''

(v) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in the figure may be modified by omitting the statement: ''Never put a rear-facing child seat in the front.''

(4) Design-specific information.

(i) A manufacturer may request in writing that the Administrator authorize additional design-specific information to be placed on the air bag sun visor label for vehicles certified to meet the requirements specified in S19, S21, or S23. The label shall conform in content to the label shown in Figure 11 of this standard and shall comply with the requirements of S4.5.1(b)(3)(i) through S4.5.1(b)(3)(iv), except that the label may contain additional, design-specific information, if authorized by the Administrator.

(ii) The request must meet the following criteria:

(A) The request must provide a mock-up of the label with the specific language or pictogram the manufacturer requests permission to add to the label.

(B) The additional information conveyed by the requested label must be specific to the design or technology of

the air bag system in the vehicle and not applicable to all or most air bag systems.

(C) The additional information conveyed by the requested label must address a situation in which foreseeable occupant behavior can affect air bag performance.

(iii) The Administrator shall authorize or reject a request by a manufacturer submitted under S4.5.1(b)(4)(i) on the basis of whether the additional information could result in information overload or would otherwise make the label confusing or misleading. No determination will be made as to whether, in light of the above criteria, the particular information best prevents information overload or whether the information best addresses a particular air bag risk. Moreover, the Administrator will not verify or vouch for the accuracy of the information.

(5) Limitations on additional labels.

(i) Except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed.

(ii) Except for the information in an air bag alert label placed on the sun visor pursuant to S4.5.1(c) of this standard, or on a utility vehicle warning label placed on the sun visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

(c) *Air bag alert label.* If the label required by S4.5.1(b) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed to that visor so that the label is visible when the visor is in that position. The label shall conform in content to the sun visor label shown in Figure 6(c) of this standard, and shall comply with the requirements of S4.5.1(c)(1) through S4.5.1(c)(3).

(1) The message area shall be black with yellow text. The message area shall be no less than 20 square cm.

(2) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

(3) If a vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the pictogram may be omitted from the label shown in Figure 6c.

* * * * *

S4.11 *Test duration for purpose of measuring injury criteria.*

(a) For all barrier crashes, the injury criteria specified in this standard shall be met when calculated based on data recorded for 300 milliseconds after the vehicle strikes the barrier.

(b) For the 3-year-old and 6-year-old child dummy low risk deployment tests, the injury criteria specified in this standard shall be met when calculated on data recorded for 100 milliseconds after the initial deployment of the air bag.

(c) For 12-month-old infant dummy low risk deployment tests, the injury criteria specified in the standard shall be met when calculated on data recorded for 125 milliseconds after the initiation of the final stage of air bag deployment designed to deploy in any full frontal rigid barrier crash up to 64 km/h (40 mph).

(d) For driver-side low risk deployment tests, the injury criteria shall be met when calculated based on data recorded for 125 milliseconds after the initiation of the final stage of air bag deployment designed to deploy in any full frontal rigid barrier crash up to 26 km/h (16 mph).

(e) The requirements for dummy containment shall continue until both the vehicle and the dummies have ceased moving.

* * * * *

S19.2.2 The vehicle shall be equipped with at least one telltale which emits light whenever the passenger air bag system is deactivated and does not emit light whenever the passenger air bag system is activated, except that the telltale(s) need not illuminate when the passenger seat is unoccupied. Each telltale:

(a) Shall emit yellow light;

(b) Shall have the identifying words ''PASSENGER AIR BAG OFF'' or ''PASS AIR BAG OFF'' on the telltale or within 25 mm (1.0 in) of the telltale; and

(c) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

(d) Shall be located within the interior of the vehicle and forward of and above the design H-point of both the driver's and the right front passenger's seat in their forwardmost seating positions and shall not be located on or adjacent to a surface that can be used for temporary or permanent storage of objects that could obscure the telltale from either the driver's or right front passenger's view, or located where the telltale would be obscured from the driver's view if a rear-facing child restraint listed in Appendix A is installed in the right front passenger's seat.

(e) Shall be visible and recognizable to a driver and right front passenger during night and day when the occupants have adapted to the ambient light roadway conditions.

(f) Telltales need not be visible or recognizable when not activated.

(g) Means shall be provided for making telltales visible and recognizable to the driver and right front passenger under all driving conditions. The means for providing the required visibility may be adjustable manually or automatically, except that the telltales may not be adjustable under any driving conditions to a level that they become invisible or not recognizable to the driver and right front passenger.

(h) The telltale must not emit light except when the passenger air bag is turned off or during a bulb check upon vehicle starting.

* * * * *

S26.2.6 While maintaining the spine angle, adjust the height of the dummy so that the bottom of the chin is in the same horizontal plane as the highest point of the air bag module cover (dummy height can be adjusted using the seat height adjustments and/or spacer blocks). If the seat prevents the bottom of the chin from being in the same horizontal plane as the module cover, adjust the dummy height to as close to the prescribed position as possible.

* * * * *

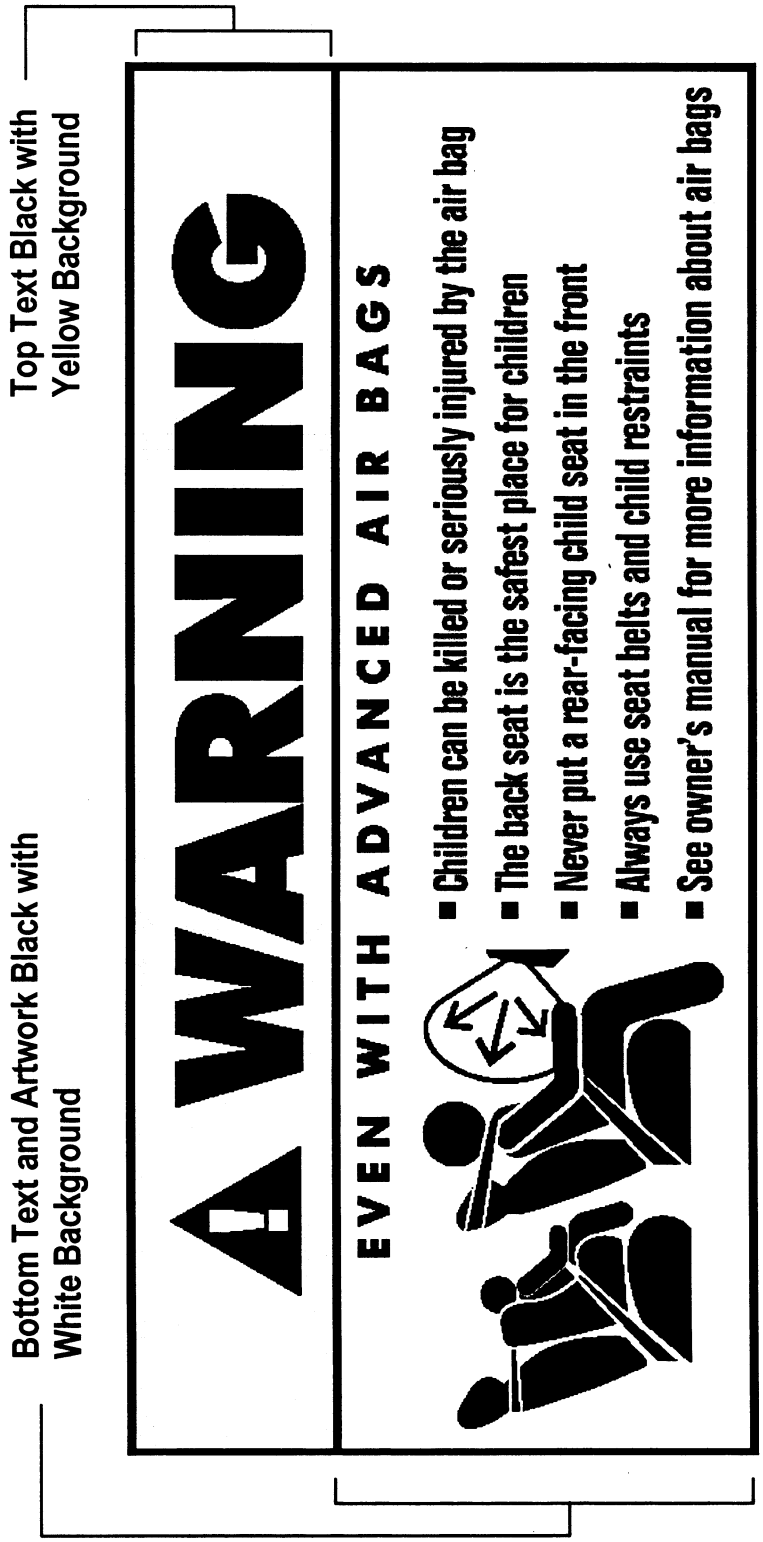

Figure 11. Sun Visor Label Visible when Visor is in Down Position.

Issued on: December 31, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–33146 Filed 12–31–02 2:31 pm]

BILLING CODE 4910–59–C

Proposed Rules

Federal Register
Vol. 68, No. 3
Monday, January 6, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–55–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q–6 airplanes. This proposed AD would require you to inspect the aileron and flap control cables for proper clearance from the fuel lines in the fuselage and make necessary adjustments; and inspect the fuel lines for damage and correct routing. This proposed AD would also require you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, this proposed AD would also require you to install protective sleeves on the fuel lines. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage which could cause a fire or explosion.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 14, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–55–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–55–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Fairchild Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–55–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Dornier Model Do 27 Q–6 airplanes. The LBA reports that, during an annual maintenance inspection, a damaged fuel line was found in the area between the firewall and the instrument panel in the fuselage.

Further inspection revealed that the damaged fuel line was incorrectly routed and not properly secured. Incorrect installation of the fuel line allowed the aileron control cable to chafe the fuel line, which caused the fuel line to leak.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected, corrected, and prevented, could result in fuel leaking into the fuselage. This could cause a fire or explosion.

Is There Service Information That Applies to This Subject?

Fairchild Dornier has issued Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.

What Are the Provisions of This Service Information?

The service bulletin specifies the following:

—Inspecting the aileron and flap control cables for proper clearance from the fuel lines and making necessary adjustments;

—Inspecting the fuel lines for damage and correct routing;

—Replacing all damaged fuel lines and rerouting all incorrectly routed fuel lines; and

—Installing protective sleeves on the fuel lines.

What Action Did the LBA Take?

The LBA classified this service bulletin as mandatory and issued German AD 2002–240, dated July 26, 2002, in order to ensure the continued airworthiness of these airplanes in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Dornier Model Do 27 Q–6 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to inspect the aileron and flap control cables in the fuselage for proper clearance from the fuel lines and make any necessary adjustments; and inspect the fuel lines for damage and correct routing. This proposed AD would also require you to replace all damaged fuel lines and reroute incorrectly routed fuel lines. After all other corrective action is taken, this proposed AD would also require you to install protective sleeves on the fuel lines.

What Is the Difference Between This Proposed AD, the LBA AD, and the Service Information?

The LBA AD and the service information requires (on German-registered airplanes) inspection and, if necessary, adjustments and/or replacement within the next 10 hours time-in-service (TIS) after the effective date of the AD. We propose a requirement that you inspect and, if necessary, adjust and/or replace within the next 55 hours TIS after the effective date of this proposed AD. We do not have justification to require this action within the next 10 hours TIS.

We use compliance times such as 10 hours TIS when we have identified an urgent safety of flight situation. We believe that 55 hours TIS will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 2 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 = $60	Not applicable	$60	$60 × 2 = $120

We estimate the following costs to reroute any fuel line that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such rerouting:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 = $120	No parts required	$120

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $60 = $360	$140	$360 + $140 = $500

Regulatory Impact

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Dornier-Werke G.M.B.H.: Docket No. 2002–CE–55–AD

(a) *What airplanes are affected by this AD?* This AD affects Model Do 27 Q–6 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damaged fuel lines and prevent the potential for further damage occurring to the fuel lines in the fuselage. Damage to the fuel lines could result in fuel leaking into the fuselage which could cause a fire or explosion.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Inspect the following: ..... (i) the aileron and flap control cable for proper clearance from the fuel lines in the fuselage; and (ii) the fuel lines between the firewall and instrument panel for damage and correct routing.	Within the next 55 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(2) Make adjustments and/or replacements if: .. (i) improper clearance is detected between the aileron and control cable and the fuel lines;. (ii) any fuel line is found damaged; or (iii) any fuel line is incorrectly routed	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and if any of the conditions specified in paragraph (d)(2) of this AD are met.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.
(3) Install a protective sleeve around the fuel lines.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD and when all corrective actions have been accomplished.	In accordance with Fairchild Dornier Do 27 Service Bulletin No. SB–1141–0000, dated June 12, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (011) 49 81 53–30 1; facsimile: (011) 49 81 53–30 29 01. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in German AD 2002–240, dated July 26, 2002.

Issued in Kansas City, Missouri, on December 30, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–146 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require an inspection to detect cracks and fractures of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap, and follow-on and corrective actions if necessary. For certain airplanes, this proposal would also require a one-time inspection to determine if a tool runout procedure has been performed in the area. This action is necessary to prevent the inboard aft flap from separating from the wing and

potentially striking the airplane, which could result in damage to the surrounding structure and potential personal injury. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 20, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–143–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-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–143–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–143–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a routine maintenance inspection, fractured lugs were found on both hinge fittings of the outboard hinge assembly mounted to the inboard main flap on a Boeing Model 767–300 series airplane. That airplane had accumulated 9,598 total flight hours and 5,393 total flight cycles. An optional ''tool runout'' procedure, which allows the part to be machined thicker and reinforces the area, had not been performed on the fitting assembly that was damaged. No cracks or fractures have been reported on fittings on which the optional tool runout procedure had been performed.

Cracked or fractured hinge fittings, if not corrected, could result in the inboard aft flap separating from the wing and potentially striking the airplane, and consequent damage to the surrounding structure and potential personal injury.

The hinge fittings on Model 767–400ER series airplanes are similar in design to those on Model 767–200, –300, and –300F series airplanes. Although the Model 767–400ER fittings are wider and thicker, this area is subject to higher fatigue loads on Model 767–400ER series airplanes. As a result, those fittings could be susceptible to early fatigue cracking or fractures. Therefore, Model 767–400ER series airplanes are also subject to the unsafe condition identified in this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, including Evaluation Form (for Model 767–200, –300, and 300F series airplanes); and Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002 (for Model 767–400ER series airplanes). (Although both service bulletins contain evaluation forms, only Service Bulletin 767–57A0076 states that the evaluation form is ''attached.'' This proposed AD would not require that any evaluation form be completed and submitted.) The service bulletins describe procedures for a detailed inspection to detect cracks and fractures of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap. Alternatively, the service bulletins provide procedures for performing a combination of a detailed inspection and an eddy current inspection to detect cracks and fractures of the same area. Boeing Service Bulletin 767–57A0076 (for Model 767–200, –300, and –300F series airplanes) also describes procedures for determining whether a tool runout procedure has been done in the area, which would eliminate the need for the terminating action and further inspection, provided no cracks or fractures are found. Follow-on and corrective actions include repetitive inspections and a ''Terminating Action'' that involves replacing the outboard hinge fittings of the trailing edge of the inboard main flap with new fittings. Accomplishment of the detailed and eddy current inspections would extend the interval for the next inspection (if necessary) beyond the interval for the detailed inspection alone. Accomplishment of the ''Terminating Action'' would eliminate the need for repetitive inspections. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would require accomplishment of the actions specified in the service bulletins

described previously, except as discussed below.

Difference Between Proposed AD and Relevant Service Information

Although Service Bulletin 767–57A0076 specifies that the manufacturer may be contacted for instructions for certain corrective actions, this proposed AD would require those corrective actions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 783 airplanes of the affected design in the worldwide fleet. The FAA estimates that 354 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action is estimated to be $120 per airplane, per inspection cycle.

It would take approximately 5 work hours per airplane to accomplish the proposed detailed visual and eddy current inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions is estimated to be $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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.

The terminating action, if accomplished, would take approximately 24 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action is estimated to be $1,440 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Boeing: Docket 2002–NM–143–AD.

Applicability: Model 767 series airplanes; certificated in any category, line numbers 1 through 826 inclusive, 830, 842, 855, 856, 859, 862, 864 through 866 inclusive, 868, 869, 870 through 874 inclusive, and 876.

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 (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inboard aft flap from separating from the wing and potentially striking the airplane, which could result in damage to the surrounding structure and potential personal injury, accomplish the following:

Inspection

(a) Perform either a detailed inspection, or a detailed inspection plus an eddy current inspection, of the outboard hinge fitting assemblies on the trailing edge of the inboard main flap to detect cracks and fractures and evidence of a tool runout procedure, as applicable.

(1) For Model 767–200, –300, and –300F series airplanes: Inspect before the airplane accumulates 2,700 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, in accordance with Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form.

(2) For Model 767–400ER series airplanes: Inspect before the airplane accumulates 12,000 total flight cycles, in accordance with Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002.

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

Follow-on/Corrective Actions

(b) Following the initial inspection(s) required by paragraph (a) of this AD: Perform applicable follow-on and corrective actions at the time(s) specified in Figure 1 of Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form (for Model 767–200, –300, and –300F series airplanes); or Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002 (for Model 767–400ER series airplanes). Do the follow-on and corrective actions (including repetitive inspections and replacement of the fittings with new fittings) in accordance with Part 1 or Part 2 of the service bulletin, as applicable, except as required by paragraph (d) of this AD. For Model 767–200, –300, and –300F series airplanes: If the fitting has the tool runout, and no cracking or fracture is found during the inspection, this AD requires no further action for that hinge fitting.

Exceptions to Service Bulletin Procedures

(c) Where the terminating action in Part 3 of the service bulletin is specified as corrective action in Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form; and Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002: This AD requires that the terminating action, if required, be accomplished before further flight.

(d) Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form, specifies to contact Boeing before the terminating action is done as corrective action for any cracking or fracture found on a Model 767–200, –300, or –300F series airplane with the tool runout. This AD requires that any such crack or fracture on those airplanes be reported to the FAA in accordance with paragraph (e) of this AD and repaired in accordance with Part 3 of the service bulletin.

Reporting Requirement

(e) For any Model 767–200, –300, or –300F series airplane with the tool runout, on which any cracking or fracture is found during the inspection(s) required by paragraph (a) of this AD: Submit a report of the inspection findings to the Manager, Seattle Aircraft Certification Office (ACO), FAA, at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the initial inspection is done after the effective date of this AD: Submit the report within 30 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the initial inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Terminating Action

(f) Unless required to do so by paragraph (b) of this AD: Operators may choose to accomplish the terminating action (including replacement of the fittings with new fittings, and reinstallation of existing upper skin access panels and fairing midsections on the trailing edge of the main flap) in accordance with Part 3 of the Work Instructions of Boeing Service Bulletin 767–57A0076, Revision 1, dated March 29, 2001, excluding Evaluation Form; or Boeing Alert Service Bulletin 767–57A0079, dated June 20, 2002; as applicable. Accomplishment of the terminating action terminates the repetitive inspection requirements of paragraph (b) of this AD.

Credit for Prior Accomplishment Per Earlier Service Information

(g) Accomplishment before the effective date of this AD of an inspection, associated follow-on and corrective actions, and terminating action in accordance with Boeing Service Bulletin 767–57A0076, dated October 26, 2000, is acceptable for compliance with the corresponding requirements of this AD for applicable airplanes.

Part Installation

(h) As of the effective date of this AD, no person may install on any airplane a hinge fitting assembly that has any part number listed in Table 1 of this AD, unless the applicable requirements of this AD have been accomplished for that fitting. Table 1 follows:

TABLE 1.—HINGE FITTING ASSEMBLY PART NUMBERS

113T2271–13	113T2271–14
113T2271–23	113T2271–24
113T2271–29	113T2271–30
113T2271–33	113T2271–34
113T2271–401	113T2271–402

Alternative Methods of Compliance

(i) 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.

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

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 odf 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.

Issued in Renton, Washington, on December 30, 2002.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–152 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–042–FOR]

Utah Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The State proposes to revise provisions of the Utah Code Annotated (UCA) that pertain to submitting permit applications and reclamation plans, and to add new provisions for providing certain assistance to operators who mine no more than 300,000 tons of coal. Utah intends to revise its program to be consistent with SMCRA, to clarify wording, and to recodify parts of the Utah Code.

This document gives the times and locations that the Utah program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., mountain standard time February 5, 2003. If requested, we will hold a public hearing on the amendment on January 31, 2003. We will accept requests to speak until 4:00 p.m., mountain standard time on January 21, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to James F. Fulton at the address listed below.

You may review copies of the Utah program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733, Telephone: (303) 844–1400, extension 1424, E-mail: *jfulton@osmre.gov.*

Lowell P. Braxton, Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114–5801, Telephone: (801) 538–5340, E-mail: *lowellbraxton@utah.gov.*

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, telephone: (303) 844–1400, extension 1424. Internet: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Description of the Proposed Amendment

By letter dated October 22, 2002, Utah sent us a proposed amendment to its program (UT–042–FOR, administrative record number UT–1171) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to a June 19, 1997, letter (administrative record number UT–1093) that we sent to the State in accordance with 30 CFR 732.17(c). The State previously addressed most of the topics included in our June 19, 1997, letter in amendment UT–038–FOR, which we approved in the April 24, 2001, **Federal Register** (66 FR 20600). Some of the topics described in that letter changed the small operator assistance program (SOAP) by raising the limit on coal production from 100,000 tons to 300,000 tons and describing changes in the type of assistance available to eligible operators under that program. We noted in our letter that those changes might require changes in State statutes. In Utah's case, it must change the SOAP provisions in the Utah Code Annotated before it can change its corresponding rules. This amendment proposes to make those SOAP changes in Utah's Code. In addition, the State proposes to make other changes at its own initiative throughout the same section of its Code that clarify the wording and recodify certain parts. The proposed clarifications involve rewording and restructuring sentences and phrases and changing punctuation. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specific changes Utah proposes to make to UCA 40–10–10 in this amendment include: Clarifying 40–10–10–(1), which describes application fees; designating new 40–10–10(2)(a) and clarifying it and (2)(a)(ii), (iii), (iv) and (vi), which generally describe how permit applications and reclamation plans are to be submitted to the State as well as ownership and right of entry information to be included with permit applications and reclamation plans; clarifying 40–10–10(2)(b), (c), and (d) and recodifying subordinate parts of those subsections, which describe the maps and information about legal right of entry, probable hydrologic consequences and other hydrology information, and characteristics of the coal to be mined that must be included in permit applications; removing existing 40–10–10(3) and replacing it with new 40–10–10(3)(a), (a)(i) through (a)(vi), (b), and (c), all of which pertain to assistance available to eligible small operators to gather and pay for certain baseline and survey data and limitations on that assistance; clarifying and recodifying 40–10–10(4)(a) and (b), which address availability of information pertaining to the coal; clarifying 40–10–10(5), which describes how to file a permit application; clarifying and recodifying 40–10–10(6)(a), (b), (b)(i) and (ii), which describe the proof and type of insurance required to accompany a permit application; and clarifying 40–10–10(7), which requires a blasting plan to be part of a permit application.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Utah program.

Written Comments

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

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. UT–042–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at (303) 844–1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., mountain standard time, by January 21, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 31, 2002.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–158 Filed 1–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[USCG–2002–13147]

RIN 2115–AG50

Penalties for Non-submission of Ballast Water Management Reports

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes penalty provisions for non-submission of Ballast Water Management Reports. The Coast Guard also proposes widening the applicability of the reporting and recordkeeping requirements to all vessels bound for ports or places within the United States, with minor exceptions. The proposed actions would increase the Coast Guard's ability to protect against introductions of new aquatic invasive

species via ballast water discharges, as required by the Nonindigenous Aquatic Nuisance Prevention and Control and the National Invasive Species Acts.

DATES: Comments and related material must reach the Docket Management Facility on or before April 7, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before April 7, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2002–13147), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Mr. Bivan Patnaik, G–MSO–4, Coast Guard, telephone 202–267–1744. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2002–13147), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

Congress, in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA), directed the Coast Guard to issue regulations and guidelines for ballast water management (BWM). The goal of BWM is to prevent the introduction and dispersal of nonindigenous species (NIS) to U.S. waters via ballast water discharges. This proposed rule would amend U.S. regulations by promulgating penalty provisions for those who fail to submit reports of their BWM activities in conjunction with their voyages to U.S. ports.

Responding to NANPCA's directive, the Coast Guard published a Final Rule (58 FR 18330, April 8, 1993) mandating BWM for the Great Lakes (33 CFR part 151, subpart C), and later extended the provisions to include the Hudson River north of the George Washington Bridge (59 FR 67632, Dec. 30, 1994). In 1999, responding to NISA's directive, we published an interim rule (64 FR 26672, May 17, 1999) that set voluntary BWM guidelines for most vessels entering all other U.S. waters, and mandated BWM reporting and recordkeeping requirements, without penalty provisions. Our Final Rule implementing these NISA-required regulations was published on November 21, 2001 (66 FR 58381).

In NISA, Congress also instructed the Secretary of Transportation (Secretary) to submit a Report to Congress evaluating the effectiveness of the voluntary program. Congress anticipated that, in this Report, the Secretary might determine that either compliance with the voluntary guidelines was inadequate, or the rate of reporting was too low to allow for a valid assessment of the compliance. In either case, Congress stipulated the development of additional regulations to make the voluntary guidelines a mandatory BWM program, and providing penalties for violations of these regulations. The Secretary's report, signed June 3, 2002, concluded that compliance with the reporting requirement of 33 CFR part 151, subpart D was insufficient to allow for an accurate assessment of the voluntary BWM regime. Accordingly, the Secretary stated his intention to make the voluntary BWM requirements mandatory and include sanctions as an enforcement tool. A copy of the Report to Congress has been placed in the docket for this rulemaking (USCG–2002–13147) and is available at *http://dms.dot.gov.*

In carrying out Congress' intent of a stepped approach, the Coast Guard, as the Secretary's delegate, is moving forward with the promulgation of penalty provisions for those who fail to submit reports of their BWM activities in conjunction with their voyages to U.S. ports. This step will also include broadening the class of vessels required to submit and keep, respectively, ballast water management reports and records.

This proposed rule will not broaden the class of vessels required to conduct ballast water exchange. The Coast Guard will address this subject in a separate rulemaking that is under development.

Related Projects

The Coast Guard is currently working on a number of other projects related to addressing the aquatic invasive species problem in U.S. waters. As mentioned

above, the Coast Guard is developing regulations to convert the voluntary guidelines in 33 CFR part 151, subpart D to a mandatory BWM program.

NANPCA and NISA authorize the Coast Guard to approve alternate ballast water treatment (BWT) methods that are found to be at least as effective as ballast water exchange (BWE) in preventing and controlling infestations of aquatic nuisance species (ANS). Therefore, in order to evaluate the effectiveness of alternative BWT methods, the Coast Guard must first define for programmatic purposes what ''as effective as [BWE]'' means. On March 4, 2002, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) titled ''Standards for Living Organisms in Ship's Ballast Water Discharged in U.S. Waters'' (67 FR 9632). Along with proposing BWT goals and standards, one of the purposes of the ANPRM was to present our approach to clarifying this term. The comment period on the ANPRM closed on June 3, 2002, and the Coast Guard is now analyzing the comments.

The Coast Guard is also planning on promulgating rules to allow for approval of ship-board installation of experimental BWT technologies.

Discussion of Proposed Rule

The proposed amendments to 33 CFR part 151 would achieve two objectives. First, penalty provisions would be clearly spelled out in both subparts C and D, in accordance with NANPCA and NISA. Violators of either the mandatory exchange provisions (for vessels bound for the Great Lakes or portions of the Hudson River) or the mandatory reporting and recordkeeping provisions (for all vessels bound for ports or places within the United States) would be liable for a civil penalty of up to $25,000 for each violation, with each day of a continuing violation equaling a separate violation. Knowing violations of either provision would be class C felonies. These changes can be found in proposed sections 151.1518 and 151.2007.

The second change would increase the number of vessels subject to the reporting and recordkeeping provisions of subpart D. This expansion of the reporting population is being proposed in order to generate the data that will allow for a more thorough understanding of ballast water delivery and management practices and how these relate to invasions of ANS from ships' ballast water on both a national and regional basis. This information should provide a clearer picture of the realities of BWM and ANS invasions over time and lead to a more effective and efficient program.

Currently, only those vessels entering United States waters after operating outside of the EEZ (which for the purposes of NANPCA as amended by NISA includes the equivalent zone of Canada) must submit ballast water management reports and keep accurate ballast water management records. Under the proposed changes, all vessels operating in United States waters bound for ports or places in the United States would have to submit these reports and keep records, regardless of whether they operated outside of the EEZ. The proposed reporting requirements are detailed in Tables 1 and 2, below. Only crude oil tankers engaged in coastwise trade, Department of Defense and Coast Guard vessels, and those vessels operating solely within one Captain of the Port (COTP) zone would be exempt from the reporting and recordkeeping requirements.

The proposed changes to the regulatory text in subpart D (with the exception of section 151.2007) would achieve this second objective, while improving the readability of the subpart. One proposed change that should be highlighted is in sections 151.2010(b) and (d), where we are proposing the deletion of the exemptions for ''a passenger vessel equipped with a functioning treatment system designed to kill aquatic organisms in the ballast water'' and ''a vessel that will discharge ballast water or sediments only at the same location where the ballast water or sediments originated''. These exemptions were intended to apply to a requirement to conduct a ballast water exchange (BWE). As there are no requirements for BWE outside of the Great Lakes and Hudson River North of George Washington Bridge, there is nothing in 33 CFR 151 Subpart D to be exempted from and the continued inclusion of this wording only leads to confusion. Requiring these previously exempted vessels to submit BWM reports will allow the U.S. Coast Guard to gain a more thorough understanding of ballast water delivery and management practices. In the future, when ballast water exchange becomes mandatory (as we expect it will), we will ensure that these exemptions are re-inserted into the regulations as appropriate.

TABLE 1.—WHERE AND WHEN MUST A VESSEL SUBMIT A REPORT IF THEY ARE ENTERING THE WATERS OF THE UNITED STATES AFTER OPERATING OUTSIDE THE EEZ?

Bound for:	You must submit your report as detailed below:
The Great Lakes	Fax the information to the U.S. Coast Guard COTP Buffalo, Massena Detachment (315–764–3283) or to the St. Lawrence Seaway Development Corporation (315–764–3250) at least 24 hours before the vessel arrives in Montreal, Quebec. In lieu of faxing, vessels that are not U.S. or Canadian flagged vessels may complete the ballast water information section of the St. Lawrence Seaway ''Pre-entry Information from Foreign Flagged Vessel Form''.
Hudson River north of the George Washington Bridge	Fax the information to the COTP New York at (718–354–4249) at least 24 hours before the vessel arrives at New York, New York. ***Note:** Vessels entering COTP New York Zone which are not proceeding up the Hudson River north of George Washington Bridge should submit their reports in accordance with the instructions in the following block.
All U.S. ports other than the Great Lakes or the Hudson River North of the George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and Submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037–0028.

TABLE 2.—WHERE AND WHEN MUST A VESSEL SUBMIT A REPORT IF THE VESSEL DID NOT OPERATE OUTSIDE THE EEZ?

Bound for:	You must submit your report as detailed below:
All U.S. ports including the Great Lakes and Hudson River North of George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and Submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail to U.S. Coast Guard, c/o SERC, P.O. Box 28, Edgewater, MD 21037–0028.

We would appreciate any comments on whether these proposed changes have unintentionally changed the voluntary guidelines in a manner not discussed above.

Regulatory Evaluation

This proposed rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, regulatory Planning and Review. The Office of Management and Budget has reviewed it under that order. It is ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. A draft Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT follows:

This Regulatory Evaluation estimates the costs and benefits of the proposed rule for civil penalties and new reporting requirements for vessels arriving from domestic ports of origin. The costs of collecting and reporting ballast water information for vessels arriving from foreign ports of origin have already been accounted for in previous Regulatory Evaluations and an OMB-approved collection of information (OMB 2115–0598). Therefore, in this Regulatory Evaluation, we account only for the costs of reporting that will be incurred by vessels arriving in U.S. ports from other U.S. ports (*i.e.*, domestic voyages).

According to data from the Coast Guard, the U.S. Customs Service, and the U.S. Maritime Administration, there are approximately 70,000 arrivals in U.S. ports annually. Of these, 50,000 have a foreign port of origin and the remaining 20,000 have a domestic port of origin. Those vessels arriving from foreign ports of origin have already been reporting ballast water management practices under existing regulations. Under the proposed rule, the 20,000 arrivals from domestic ports will now submit ballast water reports.

Based on the current collection, we estimate that each ballast water report takes 40 minutes (0.666 hours) to complete the form and submit it to the Coast Guard. We estimate that it costs $35 per hour for the labor to complete and submit each form. If there are 20,000 arrivals from domestic ports annually, this means the annual cost of the proposed rule is $466,667 ($35 × 0.666 hours × 20,000 ballast water reports).

The benefit of the proposed rule is an increase in the amount and quality of BWM information provided to the Coast Guard. This will allow the Coast Guard to more accurately analyze and assess the BWM practices and delivery patterns of vessels navigating in U.S. waters and take appropriate programmatic action.

Small Entities

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

We do not expect that a substantial number of small businesses will be significantly affected by this rulemaking. The final rule implementing NISA, published in November of 2001 (66 FR 58381), was able to certify that a significant number of small entities were not substantially affected by that rule. We do not expect that this will change by increasing the number of vessels subject to the reporting requirements, to cover all vessels equipped with ballast water tanks that are bound for ports or places within the United States, since the cost per ballast water report is only $23 (40 minutes x $35/hours).

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Mary Pat McKeown at 202–267–0500.

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

Title: Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters

Summary of the Collection of Information: The proposed rule will require 46,833 hours of labor burden annually for mandatory reporting and recordkeeping requirements.

Need for Information: The information collection requirement described in this section is necessary to carry out the reporting requirement of title 16 U.S.C. 4711, which concerns the

management of ballast water to prevent the introduction of aquatic nuisance species into U.S. waters.

Proposed Use of Information: The purpose of the information collection is to more fully understand and respond to the threat posed by ballast water. The Coast Guard and researchers, from both private and other governmental agencies, will use the information to assess the effectiveness of the voluntary ballast water management guidelines.

The collection of information for the proposed rule modifies an existing OMB-approved collection (OMB 2115–0598).

Description of the Respondents: Under the current collection, respondents are vessel owners and operators that make ports of call in the United States after departing a foreign port. Under the proposed rule, respondents will also include vessel owners and operators that make ports of call in the United States after departing another U.S. port.

Number of Respondents: The existing OMB-approved collection number of respondents is 50,000 (respondents are owners/operators of the vessels calling on U.S. ports annually). This proposed rule will increase the number of respondents by 20,000, since now owners and operators of vessels arriving from domestic ports will submit ballast water reports.

Frequency of Response: Owners/operators of vessels making calls in U.S. ports will submit ballast water reports as necessary. The existing OMB-approved collection number of responses is 50,000 (responses are arrivals at U.S. ports). This proposed rule will increase the number of responses by 20,000 (reports for vessels arriving from domestic ports of origin) for a net total of 70,000 responses.

Burden of Response: The existing OMB-approved collection burden of response is approximately 40 minutes (0.666 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This proposed rule will not increase the burden of response.

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 33,500 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This proposed rule will increase the total annual burden by 13,333 hours for a net total of 46,833 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this rule under Executive Order 13132. The Aquatic Nuisance Prevention and Control Act contains a ''savings provision'' that saves to the states their authority to ''adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act will] diminish or affect the jurisdiction of any States over species of fish and wildlife.'' 16 U.S.C. 4725. It also requires that ''all actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws.'' Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of aquatic nuisance species into U.S. waters from ship's ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, will occur. If, at some later point in the rulemaking process we determine that preemption may become an issue, we will develop a plan for consultation with affected states/localities.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not 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 proposed rule and concluded that, under

paragraph 6(b) of the Appendix to ''National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243), this rule is categorically excluded from further environmental documentation. This rule falls under congressionally mandated regulations. Analyses of these types of regulations and their respective environmental reviews have determined these actions do not normally have significant effects either individually or cumulatively on the human environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart C—Ballast Water Management for Control of Nonindigenous Species in the Great Lakes and Hudson River

1. The authority citation for part 151 subpart C continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

2. Add § 151.1518 to read as follows:

§ 151.1518 Penalties for failure to conduct ballast water exchange.

(a) A person who violates this subpart is liable for a civil penalty in an amount not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

3. The authority citation for 33 CFR part 151 subpart D continues to read as follows:

Authority: 16 U.S.C. 4711; 49 CFR 1.46.

4. Revise § 151.2005 to read as follows:

§ 151.2005 To which vessels does this subpart apply?

Unless exempted in §§ 151.2010 or 151.2015, this subpart applies to all vessels, U.S. and foreign, equipped with ballast tanks, that operate in the waters of the United States and are bound for ports or places in the United States.

5. Add § 151.2007 to read as follows:

§ 151.2007 What are the penalties for violations of the mandatory provisions of this subpart?

(a) A person who violates this subpart is liable for a civil penalty not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subpart for that violation.

(b) A person who knowingly violates the regulations of this subpart is guilty of a class C felony.

§ 151.2010 [Amended]

6. In § 151.2010:

(a) remove from the introductory text, the word ''Four'' and add, in its place, the word ''Three'';

(b) remove paragraphs (b) and (d);

(c) redesignate paragraph (c) as (b);

(d) and add new paragraph (c) to read as follows:

§ 151.2010 Which vessels are exempt from the mandatory requirements?

(c) A vessel that operates exclusively within one Captain of the Port (COTP) Zone.

§ 151.2015 [Amended]

7. In § 151.2015 remove the number ''151.2040'' and add in its place the number ''151.2041''.

§ 151.2025 [Revised]

8. Amend § 151.2025(b) by adding, in alphabetical order, the definitions for ''Exclusive Economic Zone (EEZ)'', ''port or place of departure'' and ''port or place of destination'', and revise the definitions of ''Captain of the Port (COTP)'' and ''Voyage''. The new and revised definitions read as follows:

§ 151.2025 What definitions apply to this subpart?

(a) * * *

(b) * * *

Captain of the Port (COTP) means the Coast Guard officer designated as the COTP, or a person designated by that officer, for the COTP zone covering the U.S. port of destination. These COTP zones are listed in 33 CFR part 3.

* * * * *

Exclusive Economic Zone (EEZ) means the area established by Presidential Proclamation Number 5030, dated March 10, 1983 (48 FR 10605, 3 CFR, 1983 Comp., p. 22) which extends from the base line of the territorial sea of the United States seaward 200 miles, and the equivalent zone of Canada.

* * * * *

Port or place of departure means any port or place in which a vessel is anchored or moored.

Port or place of destination means any port or place to which a vessel is bound to anchor or moor.

* * * * *

Voyage means any transit by a vessel destined for any United States port or place.

* * * * *

9. Revise § 151.2040 and its section heading to read as follows:

§ 151.2040 What are the mandatory Ballast Water Management requirements for vessels equipped with ballast tanks that operate in the waters of the United States and are bound for ports or places in the United States?

(a) A vessel bound for the Great Lakes or Hudson River, which has operated beyond the EEZ (which includes the equivalent zone of Canada) during any part of its voyage regardless of intermediate ports of call within the waters of the United States or Canada, must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of subpart C of this part.

(b) A vessel engaged in the foreign export of Alaskan North Slope Crude Oil must comply with §§ 151.2041 and 151.2045 of this subpart, as well as with the provisions of 15 CFR 754.2(j)(1)(iii). That section (15 CFR 754.2(j)(1)(iii)) requires a mandatory program of deep water ballast exchange unless doing so would endanger the safety of the vessel or crew.

(c) A vessel not included in paragraphs (a) or (b) of this section that operates in the waters of the United States and is bound for ports or places in the United States must comply with §§ 151.2041 and 151.2045 of this subpart.

(d) This subpart does not authorize the discharge of oil or noxious liquid substances (NLS) in a manner prohibited by United States or international laws or regulations. Ballast water carried in any tank containing a residue of oil, NLS, or any other pollutant must be discharged in accordance with applicable regulations.

(e) This subpart does not affect or supercede any requirement or prohibition pertaining to the discharge of ballast water into the waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 to 1376).

§ 151.2041 [Redesignated]

10. Redesignate the old § 151.2041 as the new § 151.2043.

11. Add new § 151.2041 to read as follows:

§ 151.2041 What are the Mandatory Ballast Water Reporting Requirements for all vessels equipped with ballast tanks bound for ports or places in the United States?

(a) Reporting requirements exist for each vessel bound for ports or places in the United States regardless of whether vessel operated outside of the EEZ (which includes the equivalent zone of Canada), unless exempted in §§ 151.2010 or 151.2015.

(b) The master, owner, operator, agent, or person-in-charge of a vessel to whom this section applies must provide the information required by § 151.2045 in electronic or written form to the Commandant, U.S. Coast Guard or the appropriate COTP as follows:

(1) For any vessel bound for the Great Lakes from outside the EEZ (which includes the equivalent zone of Canada).

(i) You must fax the required information at least 24 hours before the vessel arrives in Montreal, Quebec to either the USCG COTP Buffalo, Massena Detachment (315–764–3283), or the St. Lawrence Seaway Development Corporation (315–764–3250); or

(ii) If you are not a U.S. or Canadian Flag vessel, you may complete the ballast water information section of the St. Lawrence Seaway required ''Pre-entry Information from Foreign Flagged Vessels Form'' and submit it in accordance with the applicable Seaway Notice in lieu of this requirement.

(2) For a vessel bound for the Hudson River north of the George Washington Bridge entering from outside the EEZ (which includes the equivalent zone of Canada). You must fax the information to the COTP New York (718–354–4249) at least 24 hours before the vessel enters New York, New York.

(3) For any vessel not addressed in paragraphs (b)(1) and (b)(2) of this section, which is equipped with ballast water tanks and bound for ports or places in the United States. If your voyage is less than 24 hours, you must report before departing your port or place of departure. If your voyage exceeds 24 hours, you must report at least 24 hours before arrival at your port or place of destination. All required information is to be sent to the National Ballast Information Clearinghouse (NBIC) using only one of the following means:

(i) Internet at *http://invasions.si.edu/ballast.htm;* or

(ii) E-mail to ballast@serc.si.edu; or

(iii) Fax to 301–261–4319; or

(iv) Mail to U.S. Coast Guard, c/o SERC (Smithsonian Environmental Research Center), P.O. Box 28, Edgewater, MD 21037–0028.

(c) A single report that includes the ballast discharge information for consecutive voyages between U.S. ports, or between U.S. and Canadian ports on the Great Lakes, will be accepted.

(d) If the information submitted in accordance with this section changes, you must submit an amended form before the vessel departs the waters of the United States.

§ 151.2043 [Amended]

12. In newly designated § 151.2043:

(a) In the section heading, after the words ''Hudson River,'' add the words ''after operating outside the EEZ or Canadian equivalent''; and

(b) In paragraphs 151.2043(a) and 151.2043(a)(1) remove the number ''§ 151.2040(c)(4)'' and add in its place the number, ''§ 151.2041''.

§ 151.2045 [Amended]

13. In § 151.2045(a) remove the phrase ''entering the waters of the United States after operating beyond the EEZ'' and add in its place, the phrase ''bound for a port or place in the United States''.

14. Amend Appendix to Subpart D of Part 151—BALLAST WATER REPORTING FORM AND INSTRUCTIONS FOR BALLAST WATER REPORTING FORM by revising the ''Where to send this form'' instructions to read as follows:

* * * * *

Where To Send This Form

[Vessels equipped with ballast water tanks bound for all ports or places within the waters of the United States after operating outside the EEZ (which includes the equivalent zone of Canada).]

Bound for:	You must submit your report as detailed below:
The Great Lakes	Fax the information at least 24 hours before the vessel arrives in Montreal, Quebec, to the USCG COTP Buffalo, Massena Detachment (315–764–3283) or to the Saint Lawrence Seaway Development Corporation (315–764–3250). In lieu of faxing, vessels that are not U.S. or Canadian flagged may complete the ballast water information section of the St. Lawrence Seaway ''Pre-entry Information from Foreign Flagged Vessel Form''.
Hudson River north of the George Washington Bridge.	Fax the information to the COTP New York at (718–354–4249) at least 24 hours before the vessel arrives at New York, New York. ***Note:** Vessels entering COTP New York Zone which are not bound up the Hudson River north of George Washington Bridge should submit the form in accordance with the instructions in the following block.
All other U.S. Ports	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail the information to U.S. Coast Guard, c/o SERC. P.O. Box 28, Edgewater, MD 21037–0028.

[Vessels that have not operated outside the EEZ, which are equipped with ballast water tanks and are bound for all ports or places within the waters of the United States.]

Bound for:	You must submit your report as detailed below:
All U.S. ports including the Great Lakes and Hudson River North of George Washington Bridge.	Report before departing the port or place of departure if voyage is less than 24 hours, or at least 24 hours before arrival at the port or place of destination if the voyage exceeds 24 hours; and submit the required information to the National Ballast Information Clearinghouse (NBIC) by one of the following means: Via the Internet at *http://invasions.si.edu/ballast.htm;* E-mail to ballast@serc.si.edu; Fax to 301–261–4319; or Mail to U.S. Coast Guard, c/o SERC, PO Box 28, Edgewater, MD 21037–0028.

If any information changes, send an amended form before the vessel departs the waters of the United States.

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 OMB control number. The Coast Guard estimates that the average burden for this report is 35 minutes. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Commandant (G–MSO), U.S. Coast Guard, 2100 Second St. SW, Washington, DC 20593–0001, or Office of Management and Budget, Paperwork Reduction Project (2115–0598), Washington, DC 20503.

Dated: December 23, 2002.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 03–100 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Standards Governing the Design of Apartment House Mailboxes

AGENCY: Postal Service.

ACTION: Notice of intent to establish a Consensus Committee and notice of first meeting.

SUMMARY: The Postal Service intends to establish a Consensus Committee to develop recommendations for revision of USPS STD 4B, which governs the design of apartment house mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including apartment house type mailbox manufacturers, mailbox distributors, mailbox installers and servicers, postal customers, and apartment house builders, owners and managers. The purpose of this Notice is to apprise the public of the intent to establish the committee; provide the public with information regarding the committee; solicit public comment on the proposal to establish the committee and the proposed membership of the committee; explain how persons may apply or nominate others for membership on the committee; and announce the approximate date of the first committee meeting.

DATES: The Postal Service must receive written comments, requests for representation or membership on the committee, and nominations for membership on the committee no later than February 5, 2003. The first committee meeting is tentatively scheduled for some time during the first two weeks of February 2003.

ADDRESSES: The first committee meeting is tentatively scheduled to be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260. Mail comments and all other communications regarding the committee to Jeffery W. Lewis, Room 7142, at the same address. Comments transmitted by fax or email will not be accepted. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays on the 11th floor at the address above.

FOR FURTHER INFORMATION CONTACT: Jeffery W. Lewis (202) 268–4757.

SUPPLEMENTARY INFORMATION:

I. Background

U.S. Postal Service Standard 4B (USPS STD 4B), *Receptacles, Apartment House, Mail,* governs the design of apartment house mailboxes. The current standard, adopted in 1975, prescribes design limitations in terms that are no longer consistent with the operational requirements of the Postal Service. Primary issues to be addressed by the committee will include increasing design flexibility within the Postal Service's operational requirements; improving safety and mail security; and replacing existing mailboxes that do not satisfy the requirements of the new standard. The committee may also consider other issues at its discretion and within the scope set forth in paragraph II.

II. Scope of the Rule

The contents of the new standard will consist of regulations on apartment house and office building mailbox design characteristics and the replacement of existing mailboxes that do not satisfy the requirements of the new standard.

III. New and Pending Applications

Beginning on February 5, 2003, the Postal Service will take no further action on new or pending applications for approval of apartment house type mailbox designs, or on applications for modifications to approved apartment house type mailbox designs, until the revision of the standard is complete. This action is consistent with past practice, and is necessary to avoid approving designs under the current standard that may not be permissible under the new standard, or disapproving applications under the current standard that would be approved under the new standard.

IV. Consensus Process

In a consensus process, representatives of interests that would be substantially affected by the new rule meet as an advisory committee to negotiate among themselves and with the agency to reach a consensus on a proposed rule. As part of the consensus process, the agency agrees to use the committee's recommendation as the basis of the proposed rule, and each private interest agrees to support the committee's recommendation and the proposed rule to the extent that it reflects the recommendation.

A feasibility study, performed by a neutral convenor, and using the Negotiated Rulemaking Act, 5 U.S.C. 561 *et seq.* as a guide, recommended that the Postal Service initiate a consensus process. In reaching this

recommendation, the convenor determined that: (1) There is a need for the rule; (2) there are a limited number of identifiable interests significantly impacted by the rule; (3) a committee can be created with balanced representation which can represent the identified interests and can negotiate in good faith; (4) consensus on the issues appears likely; (5) the consensus process will not unduly delay the issuance of the rule; (6) the agency has resources and is willing to assist the consensus process; and (7) the agency, within the constraints of the law, will use the advisory committee's consensus as the basis of the rule for notice and comment.

V. Participants

The committee will include a representative from the Postal Service and representatives, to be selected by the Postal Service, from persons and/or organizations that will be significantly affected by this rule. Each representative may also name an alternate who may attend all committee meetings and will serve in place of the primary representative if necessary. The designated Postal Service representative will be authorized to represent the agency in the committee, and will participate in its activities, discussions, and deliberations.

The convenor has recommended that the Postal Service invite certain organizations to participate in the consensus process. The convenor has contacted these organizations, which have indicated their willingness to serve on the committee. Therefore, the Postal Service proposes to invite the following organizations to participate in the consensus process:

Representing approved apartment house-type mailbox manufacturers:

1. American Eagle Manufacturing Co.
2. American Locker Security Systems
3. Auth-Florence Manufacturing Co.
4. Bommer Industries, Inc.
5. Jensen Industries, Inc.
6. Mail Security
7. Salsbury Industries

Representing apartment house-type mailbox distributors, installers, and servicers:

8. Postal Products, Inc.

Representing management, construction, and consumer interests:

9. Associated Builders & Contractors
10. Association of General Contractors
11. Building Owners & Managers Association International
12. Direct Marketing Association
13. Magazine Publishers of America
14. National Association of Homebuilders
15. National Association of Housing & Redevelopment Officials
16. National Association of Realtors
17. National Multi-Housing Council
18. Parcel Shippers Association

VI. Tentative Schedule

The first committee meeting is tentatively scheduled for some time during the first 2 weeks of February 2003, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. Subsequent meetings will be scheduled by the committee, at the same location, and are expected to occur approximately 4 to 6 weeks apart.

VII. Nominations and Applications

Persons and organizations that will be significantly affected by this rule may apply for membership on the committee or nominate another person or organization for membership. Each nomination or application must include: (1) The name of the applicant or nominee and a description of the interests that person or organization represents; (2) evidence that the applicant or nominee is authorized to represent the interests the person proposes to represent; (3) the reasons the applicant or nominator believes its interests or those of its nominee are sufficiently different from the those of organizations listed above that those interests would not be adequately represented by the members of the committee as proposed. All nominations and applications must be received by the Postal Service at the address above no later than February 5, 2003. The Postal Service reserves the right to refuse nominations and applications that do not fulfill these requirements. The Postal Service, with the advice of the convenor, will select committee members that provide adequate representation of each significantly affected interest rather than every individual and organization affected by the rule.

VIII. Procedures and Guidelines

(A) Facilitator

The Postal Service has selected a neutral, impartial facilitator to serve as chairman of the committee meetings. The facilitator will assist committee members conduct discussions; help committee members define issues and reach consensus; and manage the minutes, agendas, and other records of the committee.

(B) Good Faith

Committee members must be committed to negotiate in good faith and be authorized by the individuals and/or organization(s) they represent to do so. Therefore, senior individuals within each interest group should be designated to serve on the committee. Also, committee members must commit to support the final consensus recommendation of the committee.

(C) Administrative Support

Administrative support will be provided by the Postal Service at its headquarters offices.

(D) Consensus

''Consensus'' is defined for the purposes of this rulemaking as the unanimous concurrence among the committee members unless the committee explicitly adopts a different definition.

(E) Committee Procedures

Under the general guidance of the facilitator, and subject to legal requirements, the committee will establish procedures and ground rules.

(F) Records

The facilitator will prepare minutes of all committee meetings. These minutes will be available for public inspection and copying as stated above.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–139 Filed 1–3–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7435–3]

Reopening of Comment Period for Proposed Exclusion for Identifying and Listing Hazardous Waste and A Determination of Equivalent Treatment; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The Environmental Protection Agency (EPA, also, 'the Agency' or 'we') is reopening the period for submitting public comments on our previous proposal to approve two petitions submitted by the University of California—E.O. Lawrence Berkeley National Laboratory (or LBNL). The Agency initially announced this proposed decision in the July 31, 2002 **Federal Register** (67 FR 49649). The first petition requested EPA to grant a one-time, generator-specific exclusion

(or 'delisting') of certain LBNL treatment residues from the list of RCRA hazardous waste. The second petition requested EPA to grant a ''determination of equivalent treatment'' (DET) for a catalytic chemical oxidation (CCO) technology that LBNL used to treat their original mixed waste.

For the first petition, EPA reviewed all of the waste-specific information provided by LBNL and determined that the petitioned waste (tritiated water with no detectable organic chemical constituents) was non-hazardous. For the second petition, EPA reviewed all of the specific CCO treatment information provided by LBNL and determined that the CCO treatment was equivalent to combustion.

EPA received a written request for an informal public hearing. Exercising the discretion set forth in the rules for rulemaking petitions, EPA has granted the request and will hold a public hearing. The purpose of the hearing will be to hear oral comments on our tentative decision.

DATES: The public hearing will be held on January 23, 2003 at 7 p.m. EPA is reopening the public comment period and we will accept public comments on these proposed decisions until February 6, 2003. We will stamp comments postmarked after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating a final decisions.

ADDRESSES: The public hearing will be held at the North Berkeley Senior Center at 1901 Hearst Avenue, Berkeley, California. Please send two copies of your comments to Rich Vaille, Associate Director, Waste Management Division (WST–1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency Records Center, 75 Hawthorne Street, San Francisco, CA 94105, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition. Call the EPA Region 9 RCRA Record Center at (415) 947–4596 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346. For technical information on specific aspects of these petitions, contact Cheryl Nelson at the address above or at 415–972–3291, e-mail address: *nelson.cheryl@epa.gov*.

Dated: December 20, 2002.

Richard Vaille,

Acting Director, Waste Management Division, Region IX.

[FR Doc. 03–174 Filed 1–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02 02–3504, MB Docket No. 02–283, RM–10614]

Radio Broadcasting Services; Buffalo, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 224C2 at Buffalo, Oklahoma, as that community's first local FM service. The coordinates for Channel 224C2 at Buffalo are 36–50–36 North Latitude and 99–24–30 West Longitude. There is a site restriction 19.8 kilometers (12.3 miles) east of the community.

DATES: Comments must be filed on or before February 10, 2003, and reply comments on or before February 25, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–383, adopted December 18, 2002, and released December 20, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision 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*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Buffalo, Channel 224C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–168 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3456; MB Docket No. 02–282; RM–10615]

Radio Broadcasting Services; Bridgeton, and Pennsauken, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition for rulemaking filed on behalf of Cohanzick Broadcasting Corp., licensee of Station WSNJ–FM and New Jersey Radio Partners, LLC, assignee of Station WSNJ–FM, requesting the substitution of Channel 300A for Channel 299B at Bridgeton, New Jersey, and reallotment of Channel 300A from Bridgeton to Pennsauken, New Jersey, as the

community's first local aural transmission service, and modification of Station WSNJ–FM's authorization to reflect the changes. This petition was originally filed as an amended proposal in MB Docket 02–26 which was terminated. Channel 300A can be allotted at a site 6.1 kilometers (3.8 miles) northeast of Pennsauken at coordinates 40–00–12 NL and 75–01–19 WL.

DATES: Comments must be filed on or before, February 10, 2003, and reply comments on or before February 25, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–382, adopted December 13, 2002, and released December 16, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by adding Pennsauken, Channel 300A and removing Bridgeton, Channel 299B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–167 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3455; MB Docket No. 02–26; RM–10362]

Radio Broadcasting Services; Bridgeton and Elmer, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: In this document, the Commission dismisses the petition for rulemaking filed by Cohanzick Broadcasting Corporation requesting the reallotment of Channel 299B from Bridgeton, New Jersey, to Elmer, New Jersey. Petitioner, by filing amended proposal requesting the substitution of Channel 300A for 299B at Bridgeton and reallotment of Channel 300A from Bridgeton to Pennsauken, New Jersey, has abandoned interest in original proposal.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–26, adopted December 4, 2002, and released December 6, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–166 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021223329–2329–01; I.D. 121302A]

RIN 0648–AQ26

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery

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

ACTION: Proposed 2003 specifications for the Atlantic bluefish fishery; request for comments.

SUMMARY: NMFS proposes 2003 specifications for the Atlantic bluefish fishery, including total allowable landings (TAL), state-by-state commercial quotas, and recreational harvest limits and possession limits for Atlantic bluefish off the East Coast of the United States. The intent of the specifications is to conserve and manage the bluefish resource and provide for sustainable fisheries.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on January 21, 2003.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and the Essential Fish Habitat Assessment (EFHA) are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA, IRFA, and EFHA are accessible via the Internet at *http://www.nero.noaa.gov*.

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments—2003 Bluefish Specifications.'' Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Fishery Policy Analyst, (978) 281–9153, e-mail at *Paul.Perra@noaa.gov*, fax at (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The FMP requires that the Council recommend, on an annual basis, a TAL, which is comprised of a commercial quota and a recreational harvest limit.

The FMP also requires that: (1) The TAL for any given year be set based on the fishing mortality rate (F) resulting from the stock rebuilding schedule contained in the FMP, or the estimated F in the most recent fishing year, whichever is lower; and (2) a total of 17 percent of the TAL be allocated to the commercial fishery, as a quota, with the remaining 83 percent allocated as a recreational harvest limit, with the stipulation that, if 17 percent of the TAL is less than 10.50 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.50 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed TAL.

The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

Proposed 2003 Specifications

Proposed TAL

On August 9, 2002, the Council adopted specifications for the 2003 Atlantic bluefish fishery. NMFS has reviewed the Council's recommendation and has found it complies with the FMP objectives. Therefore, NMFS is proposing to implement the Council's recommended specifications.

For the 2003 fishery, the stock rebuilding program in the FMP would restrict F to 0.41. However, the 2001 fishery (the most recent fishing year for which F can be calculated) produced an F of only 0.246. So, in accordance with the FMP, the TAL proposed for 2003 was set to achieve F=0.246. The resulting TAC recommended by the Council and proposed by NMFS is 39.5 million lb (17.9 million kg). The TAL is calculated by deducting discards, estimated at 2.2 million lb (0.99 million kg) for 2003, from the TAC. Therefore, the proposed TAL for 2003 is 37.293 million lb (16.916 million kg).

Proposed Commercial Quota and Recreational Harvest Limit

If the TAL for the 2003 fishery were allocated based on the percentages specified in the FMP, the commercial quota would be 6.339 million lb (2.875 million kg), with a recreational harvest limit of 30.953 million lb (10.500 million kg). However, recreational landings from the last several years were much lower than the recreational allocation for 2003, ranging between 8.30 and 15.5 million lb (3.74 and 7.05 million kg). Since the recreational fishery is not projected to land its 30.953 million-lb (12.153 million-kg) harvest limit in 2003, this allows the specification of a commercial quota of up to 10.5 million lb (4.76 million kg). NMFS proposes to transfer 4.161 million lb (1.887 million kg) from the initial 2003 recreational allocation of 30.953 million lb (12.153 million kg), resulting in 26.793 million lb (12.153 million kg) for the 2003 recommended recreational harvest limit and a proposed commercial quota of 10.5 million lb (4.744 million kg). The proposed 2003 commercial quota would be the same amount as was allocated in 2002 and implemented by NMFS and the states under the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Bluefish. A recreational possession limit of 15 fish/person (same as in 2002) is proposed, and also, 141,900–lb (64,365–kg) research set-aside (RSA) is proposed. Some or all of the RSA amount will be allocated if research proposals to utilize it are approved for award. A Request for Proposals was published to solicit proposals for 2003, based on research priorities identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission was May 13, 2002. One research project that would utilize bluefish RSA has been conditionally approved by NMFS, and is under final review by the NOAA Grants Office. The Council and NMFS have recommended an RSA allocation of 141,900 lb (64,365 kg), for that project.

If all of the bluefish RSA is allocated, the commercial quota would be 10.460 million lb (4.745 million kg) and the recreational harvest limit would be 26.691 million lb (12.107 million kg). The RSA, the commercial quota, and the recreational harvest limit will be adjusted in the final rule establishing the annual specifications for the bluefish fishery, if necessary, to reflect RSA allocations to projects forwarded to the NOAA Grants Office for award. If the awards are not made for any reason, NMFS will publish notification in the **Federal Register** to restore the unused set-aside amount to the annual commercial and recreational allocations.

Proposed State Commercial Allocations

Proposed state commercial allocations for the recommended 2003 commercial quotas are shown in the table below, based on the percentages specified in the FMP less the proposed RSA allocation.

State	% of quota	2003 Commercial Quota (lb)	2003 Commercial Quota (kg)	2003 Commercial Quota (lb)	2003 Commercial Quota (kg)
				With Research Set-Aside	With Research Set-Aside
ME	0.6685	70,193	31,839	6,992	31,718
NH	0.4145	43,523	19,741	43,357	19,667
MA	6.7167	705,254	319,898	702,570	318,684
RI	6.8081	714,851	324,251	712,131	323,021
CT	1.2663	132,962	60,310	132,456	60,082
NY	10.3851	1,090,436	494,613	1,086,286	492,736
NJ	14.8162	1,555,701	705,654	1,549,782	702,977
DE	1.8782	197,211	89,453	196,461	89,114
MD	3.0018	315,189	142,967	313,990	142,425

State	% of quota	2003 Commercial Quota (lb)	2003 Commercial Quota (kg)	2003 Commercial Quota (lb)	2003 Commercial Quota (kg)
				With Research Set-Aside	With Research Set-Aside
VA	11.8795	1,247,348	565,787	1,242,601	563,640
NC	32.0608	3,366,384	1,526,966	3,353,575	1,521,172
SC	0.0352	3,696	1,676	3,682	1,670
GA	0.0095	998	452	994	451
FL	10.0597	1,056,269	479,115	1,052,249	477,297
Total	100.0000	10,500,000	4,762,720	10,460,058	4,744,652

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866. The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for the action are provided in the preamble for the proposed rule, and in the **SUMMARY** section of the preamble, and in the IRFA. A summary of the IRFA follows.

An active participant in the commercial sector was defined as being any vessel that reported having landed one or more pounds of bluefish to NMFS-permitted dealers during calendar year 2001. All vessels are considered to be small entities. Of the active vessels in 2001, 846 landed bluefish from Maine to North Carolina. The dealer data do not cover vessel activity in the South Atlantic. State trip ticket report data indicate that 1,092 vessels landed bluefish in North Carolina. Bluefish landings in South Carolina and Georgia represented less than 1/10 of 1 percent of total landings. Therefore, it was assumed that no vessels landed bluefish from those states. In addition, 214 vessels landed bluefish to dealers on Florida's east coast in 2001. In recent years, approximately 2,063 party/charter vessels caught bluefish.

The Council analyzed three TAL alternatives. The preferred alternative examined the impacts on the industry that would result from a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial and recreational sectors (10.460 million lb (4.74 million kg) commercial; 26.691 million lb (12.107 million kg) recreational), and an RSA of 141,900 million lb (64,356 kg). Alternative 2 considered a TAL of 37.293 million lb (16.916 million kg), allocated to the commercial and recreational sectors (6.315 million lb (2.864 million kg) commercial; 30.835 million lb (13.986 million kg, recreational), and an RSA of 141,900 lb (64,365 kg). Alternative 3, provides for a lower commercial quota than Alternative 1, considers a TAL of 37.293 million lb (16.916 million kg) 9.546 million lb (4.329 million kg) commercial; 27.604 million lb (12.521 million kg) recreational), and an RSA of 141,900 lb (64,365 Kg).

On a coastwide basis, the preferred alternative would allow for less than a 1–percent decrease in total allowable commercial landings for bluefish in 2003 versus the 2002 commercial quota, due to the amount specified for the RSA. The 2003 recreational harvest limit would be 63 percent higher than the estimated recreational landings in 2002. Under this alternative, no vessels would realize significant revenue reductions. According to dealer data, 650 federally permitted commercial vessels would be expected to incur revenue losses of 5 percent or less, and 193 commercial vessels would incur revenue gains. The affected entities would be mostly smaller vessels that land bluefish in Massachusetts, New Jersey, New York and North Carolina. The revenue increase is primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, that state shows a positive proportional change in quota from 2002 to 2003 (see section 5.3 of the RIR/IRFA). In addition, economic analysis of South Atlantic Trip Ticket Report data indicated that, on average, reduction in revenues due to the change in quota levels from 2002 to 2003 are expected to have small reductions in revenue for fishermen that land bluefish in North Carolina (1.44 percent) and minimal for fishermen that land bluefish in Florida (0.07 percent).

Alternative 2 would result in a 40–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 88 percent higher than the estimated recreational landings in 2002. Under this scenario, according to Northeast dealer data, a total of 103 vessels would incur revenue losses from 5 to 39 percent, and 740 vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue. Also, evaluation of South Atlantic Trip Ticket Reports indicate an average of 6.1 and 0.03–percent reductions in revenue for fishermen that land bluefish in North Carolina and Florida, respectively.

Alternative 3 would result in a 9–percent decrease in the total allowable commercial landings for bluefish in 2003 versus 2002. The 2003 recreational harvest limit would be 69 percent higher than the estimated recreational landings in 2002. Under this scenario, based on Northeast dealer data, a total of 28 vessels would incur revenue losses from 5 to 10 percent, 626 commercial vessels would incur revenue losses of less than 5 percent of their total ex-vessel revenue, and 189 vessels would incur an increase in revenue. The revenue increase is primarily due to the fact that the New York quota was adjusted downward in 2002 due to overages in 2001. Thus, that state shows a positive proportional change in quota from 2002 to 2003 (see section 5.3 of the RIR/IRFA). Also, evaluation of South Atlantic Trip Ticket Reports indicate reduction in revenues of 1.44 and 0.07–percent for fishermen that land bluefish in North Carolina and Florida, respectively.

The Council further analyzed the impacts on revenues of the proposed RSA amount for all three alternatives. The social and economic impacts of this proposed RSA are minimal. Assuming the full RSA is allocated for bluefish, the set-aside amount could be worth as much as $45,480 dockside, based on a 2001 price of $0.32 per pound. Assuming an equal reduction among all 834 active dealer reported vessels, this could mean a reduction of about $55 per individual vessel. Changes in the recreational harvest limit would be insignificant (less than 1 percent decrease), if 2 percent of the TAL is used for research. It is unlikely that there would be negative impacts. A copy of this analysis is available from the Council (see **ADDRESSES**).

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

Dated: December 27, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory ProgramsNational Marine Fisheries Service.

[FR Doc. 03–179 Filed 1–3–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 3

Monday, January 6, 2003

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

Office of the Under Secretary

Notice of Solicitation for Membership to the Forestry Research Advisory Council

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of solicitation for membership to the Forestry Research Advisory Council.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces solicitation for nominations to fill eight vacancies on the Forestry Research Advisory Council.

DATES: Nominations must be received on or before February 15, 2003.

ADDRESSES: Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Office of the Forestry Research Advisory Council; Mail Stop 2210; 1400 Independence Avenue, SW., Washington, DC 20250–2210. Nominations delivered by express mail or overnight courier service should be sent to: Office of the Forestry Research Advisory Council; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 3213, Waterfront Centre; 800 9th Street, SW., Washington, DC 20024.

FOR FUTHER INFORMATION CONTACT: Catalino A. Blanche, Designated Federal Officer, Forestry Research Advisory Council; telephone: (202) 401–4190; fax: (202) 401–1706; e-mail: *cblanche@reeusda.gov*, or Dr. Hao Tran, Staff Assistant, Research and Development, Forest Service; telephone: (202) 205–1293; fax: (202) 205–1530; e-mail: *htran@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Section 1441 (c) of the Agriculture and Food Act of 1981 requires the establishment of the Forestry Research Advisory Council to provide advice to the Secretary of Agriculture on accomplishing efficiently the purposes of the Act of October 10, 1962 (16 U.S.C. 582a, *et seq.*), known as the McIntire-Stennis Act of 1962. The Council also provides advice related to the Forest Service research program, authorized by the Forest and Rangeland Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note)). The Council is composed of 20 voting members from the following membership categories:

- Federal and State agencies concerned with developing and utilizing the Nation's forest resources, in particular committee membership, will include representation from the National Forest System and Forest and Range Experiment Stations leaders, Forest Service;
- The forest industries;
- The forestry schools of the State certified eligible institutions, and State agricultural experiment stations; and
- Volunteer public groups concerned with forests and related natural resources.

Nomination of members representing the forestry schools will be sent to the Secretary by State-certified eligible forestry schools. This notice does not seek nominations representing those institutions.

The Council membership is appointed with staggered terms of one, two, and three years. As a result of the staggered appointments, the terms of six members expire December 31, 2002. Nominations for a three-year appointment for the six positions and two unfilled positions last year are sought. Nominees will be carefully reviewed for their broad expertise, leadership, and relevancy to a membership category. Nominations for one individual who fits several of the categories, or for more than one person who fits one category will be accepted.

Each nominee must submit and complete a current resume and Form AD–755, Advisory Committee Membership Background Information (which can be obtained from the contact person) and will be vetted before selection. Applicants are strongly encouraged to submit nominations via overnight mail or delivery service to ensure timely receipt by the USDA.

Please indicate the specific membership category for each nominee.

Done at Washington, DC this 24th day of December 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–211 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary

Notice of Appointment of Members to the National Agricultural Research, Extension, Education, and Economics Advisory Board

AGENCY: Research, Education, and Economics, USDA.

ACTION: Appointment of members.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces the appointments to the 11 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: Appointments are for a three-year term, effective October 1, 2002, until September 30, 2005, with the exception of one one-year appointment resulting from a member resignation after serving two years.

ADDRESSES: National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344A, Jamie L. Whitten Building; U.S. Department of Agriculture, STOP 2255; 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, telephone: (202) 720–3684; fax: (202) 720–6199; e-mail: *dhanfman@reeusda.gov.*

SUPPLEMENTARY INFORMATION: Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to agriculture. The Board was first appointed in September 1996 and at that time one-third of the original 30 members were appointed for

a one, two, and three-year term, respectively. Due to the staggered appointments, the terms for 11 of the 30 members who represent 11 specific categories expired September 30, 2002. The Secretary of Agriculture has made appointments for all 11 of the vacant categories. Appointees by category of the 10 new members and one re-appointment are as follows: Representing Category B. ''Farm Cooperatives,'' David Graves, President of the National Council of Farmer Cooperatives, Washington, DC; Category D. ''Plant Commodity Producers,'' Tonya Antle, Vice President, Natural Selection Foods, San Juan Bautista, California; Category G. ''National Aquaculture Associations,'' Ronald W. Hardy, Director of the Hagerman Fish Culture Experiment Station, University of Idaho, Hagerman, Idaho; Category J. ''National Food Science Organizations,'' Phillip E. Nelson, Head of the Department of Food Science at Purdue University, West Lafayette, Indiana; Category L. ''National Nutritional Science Societies,'' John W. Suttie, Professor at the University of Wisconsin, Madison, Wisconsin; Category M. ''1862 Land-Grant Colleges and Universities,'' Thomas Alvin Fretz, Dean and Director of the College of Agriculture and Natural Resources, University of Maryland, College Park, Maryland; Category R. ''Scientific Community Not Closely Associated with Agriculture,'' Ghassem Asrar, Associate Administrator for Earth Science at NASA, Washington, DC; Category U. ''Food and Fiber Processors'', Gilbert Leveille (one year term), Vice President of Technology and Food Systems Design at Cargill, Inc., and President of the Riley Memorial Foundation, Wayzata, Minnesota; Category AA. ''An Agency of USDA Lacking Research Capabilities,'' Homer Wilkes (re-appointed), State Conservationist for the Natural Resources Conservation Service, U.S. Department of Agriculture, Jackson, Mississippi; Category BB. ''Research Agency of the Federal Government other than USDA,'' Clifford Gabriel, Deputy Associate Director for Science at the Executive Office of the President, White House Office of Science and Technology Policy, Washington, DC; and Category DD. ''National Organization Directly Concerned with Research, Education, and Extension,'' Krishna Rao Dronamraju, President of the Foundation for Genetic Research, Houston, Texas.

Done at Washington, DC this 24th day of December 2002.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–210 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–113–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Veterinary Accreditation Program.

DATES: We will consider all comments that we receive on or before March 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–113–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–113–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–113–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information regarding the Veterinary Accreditation Program, contact Dr. Quita Bowman, National Veterinary Accreditation Program Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–6188. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Veterinary Accreditation Program.

OMB Number: 0579–0032.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is responsible for, among other things, protecting the health of our Nation's livestock and poultry populations by preventing the spread of contagious, infectious, or communicable diseases of livestock and poultry and for eradicating such diseases from the United States when feasible.

However, because APHIS does not have sufficient personnel to perform all necessary animal disease prevention activities, we rely heavily on assistance from veterinarians in the private sector.

Veterinary Services (VS), APHIS, administers the Veterinary Accreditation Program that authorizes private veterinary practitioners to work cooperatively with VS, as well as with State animal health officials, to carry out regulatory programs that ensure the health of the Nation's livestock and poultry.

Operating this program requires us to engage in a number of information gathering activities, including:

- Conducting veterinary accreditation orientation and training.
- Completing animal health certificates.
- Applying and removing official seals.
- Completing test reports.
- Reviewing applications for veterinary accreditation and reaccreditation.
- Recordkeeping.
- Updating information on accredited veterinarians.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.477348 hours per response.

Respondents: Accredited veterinarians, candidates for the Veterinary Accreditation Program, and State animal health officials who review applications for veterinary accreditation and reaccreditation.

Estimated annual number of respondents: 63,000.

Estimated annual number of responses per respondent: 2.095936.

Estimated annual number of responses: 132,044.

Estimated total annual burden on respondents: 63,031 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 30th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–214 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–116–1]

Oriental Mealybug; Notice of Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the control program of the Oriental mealybug (*Planococcus lilacinus*). The environmental assessment documents our review and analysis of environmental impacts associated with five alternatives for control of Oriental mealybug, as well as a recommendation for the use of biological control agents in the event Oriental mealybug is detected in the United States. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before February 5, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–116–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–116–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–116–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Dale Meyerdirk, Agriculturalist, National Biological Control Institute, PPQ, APHIS, 4700 River Road Unit 135, Riverdale, MD 20737–1236; (301) 734–5220.

SUPPLEMENTARY INFORMATION:

Background

Oriental mealybug (*Planococcus lilacinus*) is a foreign plant pest that attacks at least 96 different species of plants, including agricultural and ornamental plants. Oriental mealybug is widely distributed in the Eastern Hemisphere. In the Western Hemisphere, Oriental mealybug is found in the Dominican Republic, El Salvador, Guam, and Haiti. Susceptible areas include coastal locations in Mexico as well as the area abutting the Rio Grande Valley. In the United States, an area including all of the south, and extending north and west as far as Pennsylvania; lower Ohio, Indiana, and Missouri; and eastern Texas, is susceptible. Even in cold regions, certain greenhouse crops would be at risk of infestation. For these reasons, Oriental mealybug could become a serious agricultural threat if it were to enter and become established in the United States.

The Animal and Plant Health Inspection Service (APHIS) has completed an environmental assessment that considers various methods of suppression for Oriental mealybug in the event this pest is detected in the United States. Based on our findings, we believe that the most effective alternative available is the use of biological control agents in the form of encrytid wasps of the genera *Aenasius, Anagyrus, Aphycus, Gyranusoidea, Leptomastix, Pseudaphyscus, Taftia, Tetracnemoidea,* and *Promuscidae* in the family Aphelinidae. Therefore, we propose to import these biological control agents and rear them on Oriental mealybug in U.S. Department of Agriculture-certified insect quarantine facilities in preparation for their dissemination into the ecosystem in the event of an infestation of Oriental mealybug.

It is expected that the biological control agents would be introduced into areas where the Oriental mealybug occurs and reproduce naturally without further human intervention, and that these stingless, parasitic wasps would become established throughout the

eventual geographical distribution of Oriental mealybug in the United States. The biological characteristics of the organisms under consideration preclude any possibility of harmful effects on human health.

APHIS' review and analysis of the potential environmental impacts associated with each of the possible alternatives are documented in detail in an environmental assessment entitled ''Control of Oriental Mealybug, *Planococcus lilacinus* (Homoptera: Pseudococcidae)'' (October 2002). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

You may request copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS'' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 30th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–213 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–014N]

Residue Testing Procedures; Response to Comments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing this notice to address comments that it received on its August 6, 2001 **Federal Register** notice, ''Residue Testing Procedures.'' That notice announced that FSIS was changing the action that it would take when livestock or poultry that are presented for slaughter come from producers and others who have previously marketed such animals that contain violative levels of chemical residues. FSIS will now post on its website, the names and addresses of the sellers of livestock and poultry who the Food and Drug Administration (FDA) has determined are responsible for the repeated sale of livestock or poultry that contain violative levels of chemical residues. FSIS instituted this action partly in response to a petition submitted by a number of trade associations. The repeat violators alert list (RVAL) may be found at *http://www.fsis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carole Thomas, Technical Analysis Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 405, Cotton Annex, Washington, DC 20250–3700, (202) 205–0210.

SUPPLEMENTARY INFORMATION:

Background

FSIS conducts both ante-mortem and post-mortem inspection of all livestock and poultry presented for slaughter at each official establishment. As part of ante-mortem inspection, FSIS personnel inspect animals to determine whether they exhibit behaviors or conditions that are indicative of illegal chemical use. If such behaviors or symptoms are exhibited the animals are tagged ''U.S. Suspect'' and are further examined at post-mortem inspection.

During post-mortem inspection, FSIS veterinarians examine carcasses and their organs to determine whether the animals they came from had pathological diseases or other conditions that could have warranted the use of drugs or other chemicals and whether there are any indications of illegal chemical use. In addition, FSIS conducts laboratory analysis of sample organ tissues that have been taken from carcasses that have pathologies or other conditions indicative of chemical use to determine whether they contain violative chemical residues.

On August 6, 2001, FSIS issued a **Federal Register** notice entitled, ''Residue Testing Procedures'' (66 FR 40965). The notice announced that, in cooperation with FDA, FSIS would make publicly available a list of repeat chemical residue violators by posting the list on the FSIS Homepage (*http://www.fsis.usda.gov*). The Agency stated that the list would contain the names and addresses of the sellers of livestock and poultry that FDA had investigated and determined to be responsible for more than one chemical residue violation in a 12-month period. The names and addresses of violators will remain on the list for a year from the time that the violation is confirmed by FDA. For any subsequent violation, the time period would be extended for a year from the date that the violation is confirmed by FDA.

This new procedure replaces FSIS' previous policy of testing livestock and poultry carcasses derived from animals marketed by producers or sellers who were previously the source of an animal with a violative chemical residue at an official establishment (*i.e.*, FSIS ''5/15'' policy).

FSIS received several comments about the policy change that it made effective on September 5, 2001. FSIS has carefully considered the comments and is now responding to them.

One commenter asked FSIS to evaluate the role that livestock markets play in the marketing chain and to provide the necessary resources to ensure that only the actual violator is identified.

FSIS will work closely with the Food and Drug Administration, Center for Veterinary Medicine, to identify the source of an animal that contains a violative chemical residue. If testing shows that a carcass contains a violative chemical residue, the Slaughter Operations Staff at FSIS' Technical Service Center (TSC) will open a case file and attempt to determine the source of the livestock or poultry. The source is the farmer, hauler, or auction market that sold the animal for slaughter.

The TSC staff will try to obtain from the official establishment the name of the seller (*e.g.*, farmer, hauler, producer or auction house) of the livestock or poultry. If the source of the animal is identified, FSIS will send an ''FSIS Violation Notification Letter'' to the identified entity. The letter will provide the results of the residue tests taken.

Additionally, pursuant to an October 1984, Memorandum of Understanding, FSIS will transmit to FDA information about the violative chemical residue found, including the name of the official establishment where the livestock or poultry was presented for slaughter. Transmission to FDA is through the Residue Violation Information System (RVIS).

FDA uses the information that it receives from RVIS to conduct an investigation to confirm a violation and to determine whether the source of the violative livestock or poultry is a repeat

violator. A repeat violator is an individual or firm who repeatedly (*i.e.*, on more than one occasion) within a 12-month period sells an animal for slaughter whose carcass is found to contain a violative level of a drug, pesticide, or other chemical residue.

One commenter requested that FSIS work closely with the U.S. Animal Health Association to develop a quality assurance and food safety certification program that could be used by federal and state agencies to assist producers in developing certification and compliance procedures. The commenter also requested that FSIS develop and implement a national animal identification program to facilitate rapid traceback for animal disease and food safety issues.

FSIS believes that quality assurance programs can have significant value. Thus, through its Animal and Egg Production Food Safety Staff, it encourages States and private groups like the U.S. Animal Health and Education Association to develop them. Moreover, packers may want to require that their suppliers provide food safety certifications to ensure that the packers do not receive animals with violative residues.

FSIS, in February 2002, issued a notice, FSIS Notice 5–02, to its field personnel that emphasized the importance of animal identification and current regulatory requirements (9 CFR 310.2) on this subject. Section 310.2 requires that establishments handle severed parts of a carcass that are to be used in the preparation of meat food products in a manner that identifies them with the rest of the carcass and as being derived from the particular animal involved until the post mortem examination of the carcass and its parts have been completed. Thus, establishments are required to remove and present to FSIS program personnel, ear tags, backtags, implants, and other identifying devices in a manner that will provide a ready means of identifying a specific carcass until post-mortem examination has been completed, or to have alternative measures in place that accomplish the required identification. Additionally, 9 CFR 310.2(b)(5)(i) and (ii) require inspection program personnel to collect all IDs associated with animals to obtain the traceback information necessary for the proper disposition of an animal or carcass.

Two commenters asked whether FSIS has conducted studies that correlate target tissue collection with the actual source of the sample or correct carcass identification.

FSIS is not aware of any problems with its collection practices for target tissue samples and carcass identification. Thus, it has not conducted a study of the type described in the comment.

Some commenters asked whether FSIS would issue instructions or conduct training for all inspectors. They suggested that the instructions or training address such issues as standardized sample collection procedures for both monitoring and enforcement residue testing, and a standardized protocol for what tissue samples should be collected from each carcass to be tested.

FSIS conducts training for its personnel. The training for sample collection and sample identification that FSIS personnel receive is sufficient and provides the proper collection and sample identification methodologies. FSIS' Center for Learning conducts training for FSIS personnel that are responsible for sample collection, particularly on aseptic techniques and tissue collection for chemical residue testing. The TSC has provided hands-on, in-plant correlation training sessions with FSIS personnel that are responsible for sample collection and identification. Additionally, a computer-based training program is available to assist the in-plant inspection team on sample collection procedures.

Several commenters raised questions concerning the FSIS Web site presentation of the list of repeat violators, the residue violators alert list (RVAL). Questions included who has the responsibility for updating the list on the Web site, and how frequently FSIS will update it. Commenters also asked when the 12-month identification period on the RVAL begins if a seller is found to be a repeat violator.

The 12-month listing period on the RVAL will begin once a second violation has been confirmed by FDA. FDA, or a state government acting under FDA's authority, will conduct an on-site investigation. If FDA finds that a seller is responsible for a second violative sample, it will notify FSIS. The TSC will then notify the FSIS Webmaster to post the name and address of the repeat violator on the FSIS Web site. The Web site will be updated as violations are confirmed, and the names of the violators will be deleted once the 12-month period has passed. For subsequent violations, the time period will be extended by a year from the time the additional violation is confirmed by FDA.

One commenter asked whether there was an appeal process available to a producer who is assigned the responsibility of a violation.

An appeal can be made to FSIS and, if necessary, FSIS will consult with FDA about the appeal.

Two commenters asked what type of economic impact there would be on the average pork producer and on current marketing practices from the posting of repeat violators on the FSIS Web site.

FSIS cannot anticipate what precise economic impact might be for pork producers. FSIS anticipates, however, that the impact will be minimal because, historically, FSIS has found few chemical residue violations in pork products. Also, if drugs are used properly and the proper withdrawal time is followed, there will be no residue violation.

One commenter suggested that FSIS change the number of violations to five instead of two. The commenter argued that a repeat violation by a livestock market is not the same as a repeat violation by a single, individual producer.

FSIS believes that when there is a second chemical residue violation, regardless of who is responsible for it, there is just cause to make information about the violation available to help better ensure that meat and poultry products distributed in commerce are not adulterated with violative chemical residues.

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 provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS webpage located on the Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, farm groups, and consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included on the list. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: December 30, 2002.

Garry L. McKee,

Administrator.

[FR Doc. 03–212 Filed 1–3–03; 8:45 am]

BILLING CODE 3410–DM–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: January 8, 2003; 11:30 a.m.–2:30 p.m.

PLACE: RFE/RL Headquarters, 1201 Connecticut Avenue, NW., Suite 400, Washington, DC 20036.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c) (2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: December 30, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 03–274 Filed 1–2–03; 12:10 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty reviews: fresh garlic from the People's Republic of China.

EFFECTIVE DATE: January 6, 2003.

SUMMARY: The Department of Commerce has received requests to conduct four new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. 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 three new shipper reviews and not initiating one new shipper review.

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank or Mark Ross at (202) 482–0090 and (202) 482–4794, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 26, 2002, we received a request for a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China from Shandong Heze International Trade and Developing Company (''Shandong Heze''). In its request for review, Shandong Heze submitted copies of the invoice and bill of lading associated with the first sales that it made to the United States. However, the dates of sale and entry listed in the submitted documentation indicate that Shandong Heze's first sale to the United States was made more than one year before its November 26, 2002, request for a new shipper review. Thus, Shandong Heze's request was untimely filed pursuant to the deadline established in 19 CFR 351.214(c) and we will not initiate a new shipper review based on that request.

Instead, pursuant to its request in the alternative, we have initiated an administrative antidumping duty review of sales of subject merchandise made by Shandong Heze during the period of review, November 1, 2001 through October 31, 2002. *See* § 751 of the Tariff Act of 1930, as amended (the Act). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 67 FR 78772 (December 26, 2002).

On November 21, 2002, we received a request for a new shipper review from Zhengzhou Harmoni Spice Co., Ltd. (''Zhengzhou''). On November 27, 2002, the Department received a request for a new shipper review from Xiangcheng Yisheng Foodstuffs Co., Ltd. (''Xiangcheng''). Also on November 27, 2002, we received a request for a new shipper review from Jining Trans-High Trading Co., Ltd. (''Jining Trans-High''). Zhengzhou identified itself as a Chinese producer and exporter of fresh garlic from the People's Republic of China. Xiangcheng and Jining Trans-High are Chinese exporters of fresh garlic from the People's Republic of China. The garlic exported by Xiangcheng was produced by Henan Yuyu Fruits & Vegetables Products Co., Ltd. (''Henan''). The garlic exported by Jining Trans-High was produced by Jining Yun Feng Agricultural Products Co., Ltd. (''Jining Yun Feng'').

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i), Zhengzhou provided certifications that it had not exported subject merchandise to the United States during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(ii)(A), Xiangcheng and Jining Trans-High provided certifications that they had not exported subject merchandise to the United States during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(ii)(B), Henan and Jining Yun Feng, producers of garlic for Xiangcheng and Jining Trans-High, respectively, provided certifications that they had not exported subject merchandise to the United States during the period of investigation.

In accordance with 19 CFR 351.214(b)(2)(iii)(A), each of the three exporters, Zhengzhou, Xiangcheng, and Jining Trans-High, certified that, since the initiation of the original investigation, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation. Also, each of the two producers, Henan and Jining Yun Feng, certified that, since the initiation of the original investigation, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation.

As required by 19 CFR 351.214(b)(2)(iii)(B), each of the three exporters, Zhengzhou, Xiangcheng, and Jining Trans-High, certified that its export activities were not controlled by the central government. Also, each of the two producers, Henan and Jining Yun Feng, certified that its export activities were not controlled by the central government. Thus, the requests from Zhengzhou, Xiangcheng, and Jining Trans-High meet the content requirements set forth under 19 CFR 351.214(b)(2)(i)–(iii).

In addition, the companies submitted documentation establishing the following: (i) The date on which their subject merchandise was first entered, or withdrawn from warehouse, for consumption or the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. Thus, the requests for review meet the content requirements set forth under 19 CFR 351.214(b)(2)(iv). Accordingly, pursuant to section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of fresh garlic from the People's Republic of China exported by Zhengzhou, Xiangcheng, and Jining Trans-High. The period of review covers the period November 1, 2001, through October 31, 2002. *See* 19 CFR 351.214(g). We intend to issue final results of this review no later than 270 days after the day on which these new shipper reviews are initiated. *See* 19 CFR 351.214(i).

We will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the companies named above, until the completion of the review. As Zhengzhou has certified that it both produced and exported the subject merchandise exported to the United States during the relevant period of review, we will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to subject merchandise for which it is both the producer and exporter. For both Jining Trans-High and Xiangcheng, we will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries of subject merchandise from these two exporters for which the respective producers under review are the suppliers.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 31, 2002.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–190 Filed 1–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

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 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 annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2001 through September 30, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Alicia Kinsey, 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 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 annual list of subsidies on articles of cheese that were imported during the period October 1, 2001 through September 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: December 31, 2002.

Susan H. Kuhbach,

Acting 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	0.12	0.12
Belgium	EU Restitution Payments	0.02	0.02
Canada	Export Assistance on Certain Types of Cheese	0.22	0.22

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)
Denmark	EU Restitution Payments	0.05	0.05
Finland	EU Restitution Payments	0.14	0.14
France	EU Restitution Payments	0.10	0.10
Germany	EU Restitution Payments	0.08	0.08
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.07	0.07
Italy	EU Restitution Payments	0.08	0.08
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.03	0.03
Norway	Indirect (Milk) Subsidy Consumer Subsidy	0.33 0.15	0.33 0.15
Total		0.48	0.48
Portugal	EU Restitution Payments	0.04	0.04
Spain	EU Restitution Payments	0.05	0.05
Switzerland	Deficiency of Payments	0.07	0.06
U.K	EU Restitution Payments	0.16	0.16

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–191 Filed 1–3–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.121802B]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2003 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by April 2, 2003, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Dr. Hans Radtke, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384, 503–820–2280 (voice) or 503–820–2299 (fax). For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy telephone 503–820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

March 4, 2003: ''Review of 2002 Ocean Salmon Fisheries'' and ''Preseason Report I-Stock Abundance Analysis for 2003 Ocean Salmon Fisheries'' will be available to the public from the Council office and posted on the Council website at *http://www.pcouncil.org.*

March 25, 2003: ''Preseason Report II-Analysis of Proposed Regulatory Options for 2003 Ocean Salmon Fisheries'' and public hearing schedule will be mailed to the public and posted on the Council website at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 8, 2003: ''Draft Environmental Assessment for the Proposed 2003 Management Measures for the Ocean Salmon Fishery Managed under the Pacific Coast Salmon Plan'' will be available at the Council meeting at the Red Lion Hotel at the Quay, Vancouver, WA and posted on the Council website at *http://www.pcouncil.org.*

April 25, 2003: Council adopted ocean salmon fishing management measures will be posted on the Council website at *http://www.pcouncil.org.*

May 1, 2003: Federal regulations will be implemented and ''Preseason Report III-Analysis of Council Adopted Ocean Salmon Management Measures for 2003 Ocean Salmon Fisheries'' will be available from the Council office and posted on the Council web site at *http://www.pcouncil.org.*

Meetings and Hearings

January 21–24, 2003: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2002 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2003 ocean salmon fisheries.

February 18–21, 2003: The STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2003 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2003 ocean salmon fisheries.

March 10–14, 2003: The Council and advisory entities will meet at the Red Lion Hotel Sacramento, Sacramento, CA to adopt the 2003 salmon management options for public review.

March 31 - April 1, 2003: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

March 31, 2003: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA, 98595, telephone 360–268–9101.

March 31, 2003: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR, 97420, telephone 541–269–4099.

April 1, 2003: Red Lion Hotel Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA, 95501, telephone 707–441–4712.

April 7–11, 2003: Council and advisory entities meet at the Red Lion Hotel at the Quay, 100 Columbia St. Vancouver, WA, 98660, telephone 694–8341, to adopt 2003 management measures for implementation by NMFS.

April 8, 2003: Testimony on the management options is taken during the Council meeting at the Red Lion Hotel at the Quay, Vancouver, WA.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (voice), or 503–820–2299 (fax) at least 5 days prior to the meeting date.

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

Dated: December 30, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–178 Filed 1–3–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Request of the New York Mercantile Exchange (NYMEX) for Approval of the New NYMEX PJM Calendar-Month Daily-LMP Swap (PJM Interconnection, LLC) Futures Contract; New NYMEX PJM Calendar-Week Daily-LMP Swap (PJM Interconnection, LLC) Futures Contract; and New NYMEX PJM Day-Ahead LMP Swap (PJM Interconnection, LLC) Futures Contract

AGENCY: Commodity Futures Trading Commission

ACTION: Notice of availability of terms and conditions of proposed commodity futures contracts.

SUMMARY: The New York Mercantile Exchange (NYMEX of Exchange) has proposed three (3) new futures contracts: the PJM Calendar-Month Daily-LMP Swap (PJM interconnection, LLC) futures contract; NYMEX PJM Calendar-Week Daily-LMP Swap (PJM interconnection, LLC) futures contract; and NMEX PJM Day-Ahead LMP Swap (PJM interconnection, LLC) futures contract. The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that the proposed new NYMEX futures contracts are of major economic significance, and that publication for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 21, 2003.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to the PJM Calendar-Month Daily-LMP Swap (PJM interconnection, LLC) futures contract; NYMEX PJM Calendar-Week Daily-LMP Swap (PJM interconnection, LLC) futures contract; and NMEX PJM Day-Ahead LMP Swap (PJM interconnection, LLC) futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph B. Storer of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: *jstorer@cftc.gov.*

SUPPLEMENTARY INFORMATION: Copies of the proposed terms and conditions for the three new futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC Web site at *www.cftc.gov* under ''What's New & Pending''.

Other materials submitted by the NYMEX in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified data.

Issued in Washington, DC, on December 30, 2002.

Michael Gorham,

Director.

[FR Doc. 03–181 Filed 1–3–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 21–23 January 2003.

Time(s) of Meeting: 0800–1700, 21 January 2003, 0800–1700, 22 January 2003, 0800–1700, 23 January 2003.

Place: The Crystal City Marriott, Crystal City, VA.

Agenda: The Force Protection Study of the Army Science Board is holding a meeting on 21–23 January 2003. The meeting will be held at The Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202. The meeting will begin at 0800 hrs on the 21st and will end at approximately 1600 hrs on the 23rd. For further information, please contact: Major Bob Grier—703–604–7478 or email *robert.grier@saalt.army.mil.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 03–144 Filed 1–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 14–16 January 2003.

Time(s) of Meeting: 0800–1700, 14 January 2003, 0800–1700, 15 January 2003, 0800–1700, 16 January 2003.

Place: The Hilton Hotel, Crystal City, VA.

Agenda: The FCS Summer Study Plenary Session of the Army Science Board is holding a meeting on 14–16 January 2002. The meeting will be held at The Hilton Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202. The meeting will begin at 0800 hrs on the 14th and will end at approximately 1600 hrs on the 16th. For further information, please contact: Major Bob Grier—703–604–7478 or e-mail *robert.grier@saalt.army.mil.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 03–145 Filed 1–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 7, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Fiscal Operations Report for 2002–2003 and Application to Participate for 2004–2005 (FISAP) and Reallocation Form E40–4P.

Frequency: Annually.

Affected Public:

Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25,876.

Burden Hours: 25,876.

Abstract: This application data will be used to compute the amount of funds needed by each school for the 2004–2005 award year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 2002–2003 award year, and as part of the school funding process. The Reallocation form is part of the FISAP on the web. Schools will use it in the summer to return unexpended funds for 2002–2003 and request supplemental Federal Work-Study (FWS) funds for 2003–2004.

Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–137 Filed 1–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO: 84.349A]

Early Childhood Educator Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed achievement indicators.

SUMMARY: The Assistant Secretary for the Office of Elementary and Secondary Education announces proposed achievement indicators for the Early Childhood Educator Professional Development Program (ECEPD), for fiscal year (FY) 2003 and future year grants.

This professional development program is authorized by section 2151(e) of the Elementary and Secondary Education Act (ESEA), as added by the No Child Left Behind Act 2001, Public Law 107–110. The ECEPD program is a discretionary grant program under which funded projects provide high-quality, sustained, and intensive professional development to improve the knowledge and skills of early childhood educators who work in high-poverty communities, particularly with disadvantaged young children. The purpose of the professional development is to enhance the school readiness of young children to prevent them from encountering difficulties once they enter school, based on the best available research on early childhood pedagogy and on child development and learning. These grants are part of the President's early childhood initiative, Good Start, Grow Smart, and complement the Department of Education's early learning programs, such as Early Reading First, by helping States and local communities strengthen early learning for young children.

DATES: We must receive your comments on or before February 5, 2003.

ADDRESSES: Address all comments about these proposed achievement indicators to Patricia McKee, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W106 FB–6, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *eceprofdev@ed.gov.*

You must include the term ''Comments on Early Childhood Educator Professional Development'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Patricia McKee. Telephone (202) 260–0991 or via Internet: *Patricia.McKee@ed.gov.* Or Melanie Kadlic, U.S. Department of Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3C138, FB–6, Washington, DC 20202–2645. Telephone (202) 260–3793 or via Internet: *Melanie.Kadlic@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments about these proposed achievement indicators. To ensure that your comments have maximum effect in developing the notice of final indicators, we urge you to be specific about any recommended changes. We are particularly interested in receiving comments on whether the proposed indicators are sufficiently specific and clear.

During and after the comment period (until publication of the final achievement indicators), you may inspect all public comments about these proposed achievement indicators in room 3W100 FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays. To obtain access to the building and room, please contact in advance one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final achievement indicators in a notice in the **Federal Register**. We will determine those final indicators after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional indicators in the future, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed achievement indicators, we will invite applications through a notice in the **Federal Register**.

Background: The ECEPD program provides funds for projects that carry out activities to improve the knowledge and skills of early childhood educators working in programs that are located in high-need communities and particularly serve disadvantaged young children. These programs are based upon the best available research on early childhood pedagogy and on child development and learning, including early language and literacy development. The grants serve an important purpose because high-quality, intensive, research-based professional development is critical for implementing effective early childhood programs that enhance the school readiness of young children.

ECEPD grants are made to partnerships of: providers of professional development for early childhood educators; State or local public agencies or private organizations; and if feasible, a provider experienced in training early childhood educators to identify and prevent behavior problems or work with children identified as or suspected to be victims of abuse.

Section 2151(e)(6) of the ESEA requires the Secretary to announce achievement indicators for the ECEPD program. These achievement indicators must be designed: (1) To measure the quality and accessibility of the professional development provided; (2) to measure the impact of that professional development on the early childhood education provided by the individuals who receive the professional development; and (3) to provide any other measures of program impact that the Secretary determines to be appropriate. The statute requires each partnership receiving an ECEPD grant to report annually to the Secretary on the partnership's progress toward attaining these achievement indicators. In addition, the statute provides that the Secretary may terminate an ECEPD grant if the Secretary determines that the partnership receiving the grant is not making satisfactory progress toward attaining the achievement indicators.

The Secretary may use these achievement indicators for the ECEPD grant competition for FY 2003 and

future years. The achievement indicators proposed in this notice are the same as the achievement indicators that the Secretary announced in the **Federal Register** and used for the FY 2002 ECEPD grant competition (67 FR 37406, May 29, 2002).

Achievement Indicators: The Secretary announces the following proposed achievement indicators for the ECEPD program, as required by section 2151(e)(6) of the ESEA:

Indicator 1: Increasing numbers of hours of high quality professional development will be offered. High-quality professional development must be ongoing, intensive, classroom-focused, and based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children.

Indicator 2: Early childhood educators who work in early childhood programs serving low-income children will participate in greater numbers, and in increasing numbers of hours, in high-quality professional development.

Indicator 3: Early childhood educators will demonstrate increased knowledge and understanding of effective strategies to support school readiness based on scientific research on cognitive and social development in early childhood and effective pedagogy for young children.

Indicator 4: Early childhood educators will more frequently apply research-based approaches in early childhood pedagogy and child development and learning domains, including using a content-rich curriculum and activities that promote language and cognitive development.

Indicator 5: Children will demonstrate improved readiness for school, especially in the areas of appropriate social and emotional behavior and early language and literacy competencies.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our proposed achievement indicators for this program.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.349A, Early Childhood Educator Professional Development Program)

Program Authority: 20 U.S.C. 6651(e).

Dated: December 30, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 03–159 Filed 1–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–111–002; Docket No. EL01–84–000]

Cities of Anaheim, Azusa, Banning, Colton and Riverside, California. v. California Independent System Operator Corporation; Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporation; Order Providing Guidance on the Appropriate Procedures for Approval of Settlement

Issued December 30, 2002.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. This order provides guidance on procedural questions raised by certain parties in this proceeding relating to an Offer of Settlement filed while settlement judge procedures were ongoing.

Background

2. There is a lengthy procedural history in this case, some of which is not pertinent to the questions raised in the instant request for guidance; this order will relate only those events and facts necessary to address the request before us.

3. On September 15, 2000, the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) filed a complaint against the California Independent System Operator Corporation (Cal ISO) regarding costs incurred by the Cal ISO and passed on to customers as neutrality adjustment charges. The Commission acted on the complaint on March 14, 2001, dismissing it in part and granting it in part.[1] Subsequently, the Commission granted in part and denied in part rehearing.[2] Parties sought further rehearing.

4. On June 1, 2001, the Salt River Project Agricultural Improvement and Power District (SRP) filed a complaint against the Cal ISO in Docket No. EL01–84–000 challenging several aspects of the Cal ISO's neutrality adjustment charges. On June 22, 2001, the Cal ISO, Southern Cities, and SRP filed a motion to institute settlement judge procedures to resolve the issues raised in the two complaints and shortly thereafter, the Commission issued an order initiating settlement judge procedures.[3] The order did not institute hearing proceedings or authorize designation of a presiding administrative law judge.

5. The parties participated in numerous settlement conferences to resolve the complaints, and on July 31, 2002, Southern Cities, SRP and Cal ISO (Settling Parties) submitted to the Commission an Offer of Settlement and Settlement Agreement (Offer of Settlement). In addition to comments supporting the Offer of Settlement from the Settling Parties and trial staff, Pacific Gas and Electric Co. (PG&E) filed comments opposing the Offer of Settlement, and the Commission received motions to intervene out-of-time, and protests or comments in opposition, from Enron Power Marketing, Inc. (Enron), Puget Sound Energy, Inc. (Puget Sound), IDACORP Energy, L.P. (IDACORP), and California Generators.[4] Subsequently, participants

[1] Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp., 94 FERC ¶61,268 (2001).

[2] Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp., 95 FERC ¶61,197 (2001).

[3] Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp., 96 FERC ¶61,024 (2001).

[4] The California Generators are: Duke Energy North America, LLC; Duke Energy Trading and Marketing, L.L.C.; Dynegy Power Marketing, Inc.; El Segundo Power LLC; Long Beach Generation LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; Mirant Americas Energy Marketing, LP; Mirant California, LLC; Reliant Energy Power Generator, Inc.; Reliant Energy Services, Inc.; and Williams Energy Marketing & Trading Company. The California Generators took no position on the Offer of Settlement.

filed reply comments. Enron filed a conditional withdrawal of its motion to intervene out-of-time; IDACORP and Puget Sound conditionally withdrew their protests. The Settling Parties and the California Department of Water Resources (DWR) opposed the interventions.

6. On November 1, 2002, the Settlement Judge issued an order granting the motions to intervene. The order noted that it appears the Offer of Settlement cannot be certified to the Commission if, as alleged by PG&E and trial staff, there are material issues of fact to be resolved. The judge determined that an additional settlement conference should be convened to clarify whether there are any material issues of fact remaining. The judge stated that the motions to intervene out-of-time were granted so that the additional intervenors could be included in the next settlement conference.

7. The November 1 Order prompted the Settling Parties to file a request for guidance from the Commission, on an expedited basis, regarding the appropriate procedures to be followed to approve the Offer of Settlement. The Settling Parties state that they are concerned that, without guidance from the Commission on the appropriate decisional authority, action on the Offer of Settlement will be delayed or will become sidetracked if the negotiation process is to begin again before a new settlement judge and to include additional parties.

8. The request for guidance posits that, under the Commission's Rules of Practice and Procedure, settlement judges are not authorized to certify a settlement or to make other substantive rulings, and that the Commission is the appropriate authority to act on the Offer of Settlement because the proceedings were never set for hearing before a presiding administrative law judge. The Settling Parties also question the settlement judge's authority to act on the motions to intervene out-of-time, and they state that the Commission should have ruled on the motions.

9. PG&E and IDACORP and Puget filed answers to the request for guidance, PG&E states that it does not take issue with the procedural questions raised in the request, but objects that the Settling Parties have attempted to reargue the merits of the Offer of Settlement. IDACORP and Puget remark that the Offer of Settlement fails to ensure that all entities who are owed refunds, and not just the Settling Parties, will receive them. They continue that denial of their motions to intervene in this proceeding would be shortsighted because, if excluded, they could simply file complaints and seek consolidation with the ongoing proceeding.

Discussion

10. Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.602 (2002), provides procedures for the submission of offers of settlement. An uncontested offer of settlement may be certified to the Commission upon a finding that the offer is not contested by any participant.[5] Where an offer of settlement is contested, it may be certified to the Commission if there is no genuine issue of material fact or if the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.[6] The section does not expressly discuss settlement judges, the role they play in the settling of cases, or the handling of such settlements.

11. Rule 603 provides procedures for negotiating settlements before a settlement judge. The powers and duties of settlement judges include convening and presiding over conferences and settlement negotiations, assessing the practicalities of a potential settlement, reporting to the Chief Administrative Law Judge or the Commission describing the status of the negotiations, and recommending the termination or continuation of settlement negotiations.[7] The section does not expressly discuss certification of settlements to the Commission.

12. As stated above, the Commission set this case for settlement judge procedures under Rule 603. Although settlement judges typically will certify to the Commission uncontested settlements,[8] the substantive determinations necessary to certify a contested settlement, as described in Rules 602(h)(2)(ii) and (iii), are not appropriately made by a settlement judge. Given that the settlement judge may well be privy to confidential, non-record information and given that the settlement judge may have had off-the-record discussions about the merits of issues and not all parties may have been present, Rule 603 does not empower settlement judges to make substantive findings regarding a contested offer of settlement or to certify a contested offer of settlement.[9] Further, it is not necessary that the settlement judge do so. Where a contested settlement is filed in a case that is pending solely before a settlement judge, the contested settlement is already before the Commission itself.[10] (We add that, insofar as the settlement judge is to report to the Chief Judge and/or the Commission, in the future when a settlement is contested the settlement judge should report the fact that a filed settlement has been contested, and identify what the matters at issue may be.[11]

13. The Commission thus does not need the settlement judge in this case to pursue the question of whether, in fact, any genuine issues of material fact remain. The Commission will consider the record in this proceeding as it has been developed to date, address the merits of the issues presented, and also determine what, if any, additional procedures may be necessary. At the same time, the Commission will address the motions to intervene out-of-time, and oppositions thereto, filed by Enron, Puget Sound, IDACORP, and the California Generators. Rule 603 does not empower settlement judges to rule on motions to intervene; these will be addressed by the Commission in this case (and interventions sought in similar circumstances in future cases should be addressed by the Chief Judge[12]), as appropriate.

The Commission orders:

(A) The Commission hereby responds to the Settling Parties' request for guidance, as set forth in the body of this order.

(B) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–195 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–M

[5] 18 CFR § 385.602(g) (2002).

[6] 18 CFR § 385.602(h)(2)(ii) and (iii) (2002).

[7] 18 CFR § 385.603(g) (2002).

[8] We find that their doing so is appropriate and not inconsistent with our regulations.

[9] *See* American Electric Power Service Corp. and American Electric Power Company, Inc., 100 FERC ¶ 61,346 at P 41–42 (2002), *reh'g pending.*

[10] *See* 18 CFR 385.602(b) (2002).

[11] However, the settlement judge, as noted, should not make substantive findings on the matters at issue.

[12] *See* 18 CFR 375.304(a), 385.102(a), 385.214(c) and (d), and 385.504(b)(12) (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–30–000]

BP West Coast Products, LLC, Atlantic Richfield Company, Intalco Aluminum Corporation; Notice of Filing

December 30, 2002.

Take notice that on December 18, 2002, BP West Coast Products, LLC (BP), Atlantic Richfield Company (Atlantic Richfield) and Intalco Aluminum Corporation (Intalco) jointly filed an amendment, pursuant to section 3 of the Natural Gas Act (NGA) and section 153 of the Federal Energy Regulatory Commission's regulations, 18 CFR 153 and Executive Order No. 10485, as amended by Executive Order No. 12038, to the section 3 Authorization and Presidential Permit (Permit) issued by the Commission in Docket No. CP89–267–000 to Atlantic Richfield and Intalco for the Ferndale Pipeline.[1] The purpose of the amendment is to insert BP's name into the Permit in lieu of Atlantic Richfield due to transferring of Atlantic Richfield's interest in the Ferndale Pipeline to BP.[2] The application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

BP and Intalco propose to continue to operate and maintain the existing facilities at the U.S./Canada border as authorized by the 1989 Permit. No additional facilities are proposed by this amendment. The filing does not seek any change in the terms and conditions of the Permit for the Ferndale Pipeline.

Any questions regarding the application are to be directed to Daniel M. Adamson, Davis Wright Tremaine LLP, 1500 K Street, NW., Suite 450, Washington, DC, 20005.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–124 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 49 FERC ¶ 61,294 (1989).

[2] Atlantic Richfield's interest in the Ferndale Pipeline became assets of BP on January 1, 2002.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–32–000]

Northwest Pipeline Corporation; Notice of Application

December 30, 2002.

Take notice that on December 23, 2002 Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158 filed in Docket No. CP03–32–000, an abbreviated application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for its ''White River Pipeline Replacement Project'' requesting the Commission to grant:

(i) A certificate of public convenience and necessity authorizing Northwest to construct and operate approximately 4,300 feet each of relocated replacement 26-inch pipeline and 30-inch pipeline loop in King County, Washington;

(ii) approval for Northwest to abandon, partially by removal and partially in place, approximately 3,300 feet each of 26-inch pipeline and 30-inch pipeline loop being replaced by the relocated facilities; and

(iii) approval to remove 665 feet of 26-inch pipeline crossing the White River that was previously retired in place.

All as more fully set forth in its petition which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room 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 field last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Any questions regarding this application should be directed to Gary Kotter, Manager, Certificates and Tariffs, at (801) 584–7117, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158.

Northwest states that as a result of high flows and erosion in the White River over the past several years it has installed temporary structures and sheet piling to the banks of the river to maintain the integrity of the 26-inch and 30-inch pipeline crossings. Northwest asserts that the proposed replacement project is necessary to provide a more permanent solution for improved pipeline safety and integrity, while

restoring the natural environment of the river and floodplains at the pipeline crossing location.

Northwest states that construction of the project is scheduled to occur over a two-year period to accommodate anticipated permitting requirements and environmental limitations on construction windows. Northwest plans to commence construction during the summer of 2003 and complete the project in the fall of 2004.

The estimated cost of the proposed project is approximately $29.4 million.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentator will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentator will not be required to serve copies of filed documents on all other parties. However, the non-party commentator will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–126 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–000]

Paiute Pipeline Company; Notice of Application

December 30, 2002.

Take notice that on December 19, 2002, Paiute Pipeline Company (Paiute), PO Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP03–31–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for an order granting a certificate of public convenience and necessity and permission and approval to abandon facilities, so as to enable Paiute to replace two segments of deteriorating pipeline on its Carson Lateral mainline system and at the same time enhance the capacity on its Carson Lateral to meet the growth requirements of an existing shipper served by that portion of its transmission system, Southwest Gas Corporation-Northern Nevada (Southwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Paiute states that it will be replacing two deteriorated segments of the original 10-inch transmission line on its Carson Lateral. At the same time, however, as a result of a request by Southwest for additional firm transportation service on the Carson Lateral, Paiute states that it is also proposing to enhance the capacity of its Carson Lateral facilities by replacing the deteriorated segments with 20-inch diameter pipeline, rather than in kind, and by installing additional new and replacement 20-inch loop pipeline segments.

Specifically, Paiute states that it proposes to (1) Replace approximately 8.0 miles of 10-inch pipeline on the Carson Lateral between mileposts 37.34 and 45.34 with approximately 8.1 miles of 20-inch pipeline; (2) install approximately 6.4 miles of 20-inch loop

pipeline on the Carson Lateral between mileposts 9.45 and 15.85; and (3) replace and/or install pressure regulating facilities at four locations.

Paiute states that it has entered into a long-term transportation service agreement with Southwest under which Paiute will provide Southwest with additional firm transportation service of up to 5,868 Dth per day from the Wadsworth receipt point, where Paiute interconnects with Tuscarora Gas Transmission Company, to various delivery points served by the Carson Lateral. Paiute also states that the proposed facilities will add the necessary capacity to provide the increase in firm transportation service and will preserve the existing flexibility of delivery capability afforded to its shippers.

Paiute states that the estimated cost of the proposed facilities is $10,742,000. The cost to abandon in place the existing 10-inch pipeline and to remove certain pressure regulating facilities is estimated to be $18,000. Paiute requests that the Commission, in accordance with its 1999 Policy Statement for the construction of new pipeline facilities, make a determination that a portion of the costs of the proposed facilities be recovered through an incremental rate charged to Southwest, and a portion of the costs be rolled into Paiute's systemwide rates in Paiute's next general rate case under section 4 of the Natural Gas Act. Paiute states that if it were to construct new 10-inch pipeline to replace the two deteriorated 10-inch segments, it would install 6.42 miles of 10-inch replacement pipe at a cost of $3,487,000. Paiute states that it has requested that the Commission determine that $3,487,000 of the costs of the proposed facilities can be rolled into Paiute's systemwide rates in its next rate case, and that the remainder if the project cost be recovered through an incremental surcharge assessed to Southwest.

Paiute requests the issuance of a final certificate order no later than June 1, 2003 so that the proposed facilities can be constructed and placed into service by November 1, 2003.

Any questions concerning this application may be directed to Edward C. McMurtrie, Vice President, General Manager, Paiute Pipeline Company, PO Box 94197, Las Vegas, Nevada 89193–4197, at (702) 876–7178 or fax (702) 873–3820.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original an two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment date: January 21, 2003.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–125 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–25–000, et al.]

PSEG Power Connecticut LLC, et al.; Electric Rate and Corporate Filings

December 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Power Connecticut LLC

Docket No. EG03–25–000.

Take notice that on December 23, 2002, PSEG Power Connecticut LLC (Applicant), filed with the Federal Energy Regulatory Commission (FERC or the Commission) an amendment to its December 4, 2002 application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations. The amendment requests Commission authority to engage in certain additional activities incidental to the generation of electricity for sale at wholesale.

The Applicant is a limited liability company formed under the laws of the State of Delaware. The Applicant is engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning or owning and operating eligible electric facilities and participating in certain other activities incidental to such eligible electric facilities as authorized under PUHCA. The Applicant owns and operates eligible facilities located in Connecticut.

Comment Date: January 16, 2003.

2. New York Independent System Operator, Inc.

Docket No. EL01–50–003.

Take notice that on December 20, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in accordance with the Commission's November 22, 2002 order in the above-captioned proceedings.

The NYISO has served a copy of this filing upon all parties designated on the official service lists compiled by the Secretary in these proceedings. The NYISO has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 16, 2003.

3. Town of Norwood, Massachusetts, Complainant *v.* National Grid USA, New England Electric, System, New England Power Company, Massachusetts Electric Co., and Narragansett, Electric Company, Respondents.

[Docket No. EL03–37–000]

Take notice that on December 23, 2002, the Town of Norwood, Massachusetts (Norwood) filed with the Federal Energy Regulatory Commission (Commission) a Complaint under Section 206 of the Federal Power Act against National Grid USA, doing business as New England Electric System, New England Power Company, Massachusetts Electric Co. and Narragansett Electric Company. Norwood complains that these companies, through New England Power Company, have demanded, charged, and sought to collect from Norwood an alleged ''Contract Termination Charge'' that is unjust, unreasonable, unduly discriminatory, preferential and otherwise unlawful as to Norwood. A copy of this complaint was served on these companies through New England Power Company.

Comment Date: January 13, 2003.

4. Occidental Energy Marketing, Inc.

[Docket No. ER02–1947–002]

Take notice that on December 17, 2002, Occidental Energy Marketing, Inc. filed a Notice of Cancellation with regard to Occidental Energy Marketing, Inc. FERC Electric Rate Schedule No. 1 to be effective February 17, 2003.

Comment Date: January 7, 2003.

5. Sierra Pacific Power Company Nevada Power Company

[Docket No. ER02–2609–002]

Take notice that on December 23, 2002, Sierra Pacific Power Company and Nevada Power Company (collectively, Applicants) tendered for filing pursuant to Section 205 of the Federal Power Act, Section 35 of the Commission's Regulations, and the Commission's November 21, 2002 Order issued in the above-referenced proceeding, a compliance filing consisting of clean and redlined versions of the Applicants' Open Access Transmission Tariff (OATT). This compliance filing is being made to satisfy the requirement in the Commission's November 21 Order to make a compliance filing within 30 days implementing certain specified changes in the OATT.

Comment Date: January 13, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER03–254–001]

Take notice that on December 20, 2002, PJM Interconnection, L.L.C. (PJM), amended its December 6, 2002 filing in this docket. As part of the December 6, 2002 filing, PJM added a new Schedule 12 to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. that lists all current PJM members. MG Industries, a current member of PJM, inadvertently was omitted from the new Schedule 12. Therefore, PJM hereby amends its December 6, 2002 filing to include MG Industries in Schedule 12.

PJM states that copies of this filing were served upon all parties listed on the official service list compiled by the secretary in this proceeding and MG Industries.

Comment Date: January 10, 2003.

7. New York Independent System Operator, Inc.

[Docket No. ER03–297–000]

Take notice that on December 23, 2002, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff). The proposed filing would amend the TCC credit policy. The NYISO has requested that the Commission make the filing effective on January 10, 2003.

The NYISO states it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 13, 2003.

8. Pacific Gas and Electric Company

[Docket No. ER03–299–000]

Take notice that on December 17, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing an annual update filing including revisions to its Reliability Must Run Service Agreements (RMR Agreements) with the California Independent System Operator Corporation (ISO) for Helms Power Plant, PG&E First Revised Rate Schedule FERC No. 207 and San Joaquin Power Plant, PG&E First Revised Rate Schedule FERC No. 211. This filing revises portions of the Rate Schedules to adjust the values for Contract Service Limits, Owner's Repair Cost Obligation and Prepaid Start-up information. These changes are expressly required and/or authorized under the RMR Agreements.

PG&E states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: January 7, 2003.

9. Pacific Gas and Electric Company

[Docket No. ER03–300–000]

Take notice that on December 20, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing changes in rates included in its Transmission Owner Tariff (TO Tariff) for the Transmission Revenue Balancing Account Adjustment (TRBAA) rate, the Reliability Services (RS) rates the Transmission Access Charge Balancing Account Adjustment (TACBAA) also set forth in its TO Tariff. With the exception of the TACBAA rate, these changes in rates are proposed to become effective January 1, 2003.

Copies of this filing have been served upon the California Independent System Operator (ISO), Scheduling Coordinators registered with the ISO, Southern California Edison Company, San Diego Gas &Electric Company, the California Public Utilities Commission and other parties to the official service

lists in recent TO Tariff rate cases, FERC Docket Nos. ER00–2360–000 and ER01–66–000.

Comment Date: January 10, 2003.

10. Southern California Edison Company

[Docket No. ER03–301–000]

Take notice, that on December 20, 2002, Southern California Edison Company (Edison) tendered for filing revisions to its firm transmission service agreements (Existing Transmission Contracts) with the following entities:

Entity Rate Schedule FERC No.

1. City of Azusa 372, 373, 374, 375, 376, 377.
2. City of Banning 378, 379, 380, 381, 382, 383.
3. City of Colton 361, 362, 363, 364, 365, 366.
4. City of Riverside 390, 391, 392, 393.

The revised Existing Transmission Contracts specify, among other things, the terms, conditions and rates, for transmission service over Edison's transmission facilities. Edison requests that the revised Existing Transmission Contracts be accepted for filing effective January 1, 2003.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the Cities of Azusa, Banning, Colton and Riverside, and counsel for the Cities.

Comment Date: January 10, 2003.

11. North West Rural Electric Cooperative

[Docket No. ER03–302–000]

Take notice that on December 20, 2002, North West Rural Electric Cooperative (North West) filed three rate schedules for service by North West to the City of Westfield, Iowa pursuant to section 205 of the Federal Power Act and 35.13 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.13. These agreements are: Rate Schedule dated August 1, 1998 (Initial Rate Reduction); Agreement for Wheeling Electric Power dated January 20, 1999 (Wheeling Agreement); and Agreement for Electric Service dated January 1, 2001 (Second Rate Reduction). North West filing is available for public inspection at its offices in Orange City, Iowa.

North West submits the agreements for filing and requests that: (1) The Rate Reduction Agreement be permitted to become effective as a rate schedule as of August 1, 1998; (2) the Wheeling Agreement be permitted to become effective as of January 1, 2000; and (3) the Second Rate Reduction be permitted to become effective as of January 1, 2001. North West requests waiver of the Commission notice requirements to permit these effective dates. Additionally, North West requests that the Initial Rate Reduction and the Wheeling Agreement be deemed superseded as of January 1, 2000 and January 1, 2001, respectively. North West also requests that its Agreement for Purchase of Power Between Plymouth Electric Cooperative Association and Town of Westfield, Iowa, currently on file with the Commission, be deemed superseded as of August 1, 1998. After all approvals, the Second Rate Reduction will be the only agreement in effect for North West.

Comment Date: January 10, 2003.

12. New York Independent System Operator, Inc.

[Docket No. ER03–303–000]

Take notice that on December 20, 2002, the New York Independent System Operator, Inc. (NYISO) filed the following Market Administration and Control Area Services Tariff (Services Tariff) revisions to the NYCA demand response programs: (I) Extension of the Emergency Demand Response Program (EDRP) through October 31, 2005; (ii) establishment of EDRP Resource eligibility for participation in the NYCA Energy market Locational Based Marginal Pricing price setting mechanism; (iii) adoption of a zonal floor bid price for the Day-Ahead Demand Response Program; (iv) extension of the time period in which Demand Reduction Incentive Payments will be available for Demand Reductions through October 31, 2004; (v) de-linking of the Special Case Resource (SCR) program and EDRP so that the NYISO may activate each program separately; (vi) implementation of a Load reduction Energy payment to SCRs that verify Load reduction in response to a Forecast Reserve Shortage; and (vii) changes in the NYISO administration of the SCR program to facilitate requests for performance by SCRs.

The NYISO has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 10, 2003.

13. Consolidated Edison Energy, Inc. and Rockland Electric Company

[Docket No. ER03–304–000]

Take notice that on December 20, 2002, Consolidated Edison Energy, Inc. (CEE) and Rockland Electric Company (RECO) tendered for filing requests to (I) permit CEE's participation in the statewide auction bidding process approved by the New Jersey Board of Public Utilities to the extent that CEE may bid to supply the electric load requirements of its affiliate, RECO, which are not served by alternative power suppliers and, if any such bid that CEE may submit is successful, entry into the requisite BPU-approved supply agreements with RECO; (ii) waive, to the extent necessary, applicable provisions in Petitioners' codes of conduct and market-base rate tariffs and the Commission's regulations; and (iii) give expedited review and approval to the foregoing requests at the earliest possible date in view of the February 3, 2003 date for submitting auction bids.

Comment Date: January 10, 2003.

14. PPL Electric Utilities Corporation

[Docket No. ER03–305–000]

Take notice that on December 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a revised Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Renovo/Chapman delivery point.

Comment Date: January 10, 2003.

15. North West Rural Electric Cooperative

[Docket No. ER03–306–00]

Take notice that on December 20, 2002, North West Rural Electric Cooperative (North West) filed its open access transmission tariff (OATT) and accompanying rates pursuant to the Federal Energy Regulatory Commission (Commission) Order No. 888 and section 205 of the Federal Power Act. North West is submitting the tariff because it has received a request for transmission service on its facilities. North West filing is available for public inspection at its offices in Orange City, Iowa.

Comment Date: January 10, 2003.

16. PPL Electric Utilities Corporation

[Docket No. ER03–307–000]

Take notice that on December 20, 2002, PPL Electric Utilities Corporation (PPL Electric) filed a revised Interconnection Agreement between PPL Electric and Allegheny Electric Cooperative, Inc. for interconnection at the Fairfield delivery point.

Comment Date: January 10, 2003.

17. Southern California Edison Company

[Docket No. ER03–308–000]

Take notice, that on December 20, 2002, Southern California Edison

Company (Edison) tendered for filing a revised rate for transmission service to be provided pursuant to the terms of the Exchange Agreement (Agreement) with the Department of Water and Power of the City of Los Angeles (DWP), Rate Schedule FERC No. 219. This rate change is made in accordance with Section 8.7.6 of the Agreement and is to become effective for service rendered on and after January 1, 2003.

Copies of this filing were served upon the Public Utilities Commission of the State of California, and the DWP.

Comment Date: January 10, 2003.

18. Allegheny Power

[Docket No. ER03–309–000]

Take notice that on December 19, 2002, Allegheny Power (Allegheny) submitted for filing an unexecuted Interconnection and Operating Agreement (Agreement) with Duke Energy Fayette, LLC (Duke) and a Letter Agreement between Allegheny and Duke.

Allegheny requests an effective date of December 20, 2002 for the Agreement and Letter Agreement and accordingly seeks waiver of the Commission's prior notice requirements. Copies of the filing were served on Duke and the Maryland, Ohio, Pennsylvania, Virginia and West Virginia public utility commissions.

Comment Date: January 10, 2003.

19. California Independent System Corporation

[Docket No. ER03–310–000] Operator

Take notice that on December 20, 2002, the California Independent System Operator Corporation (ISO) submitted an informational filing as to the ISO's updated transmission Access Charge rates effective as of January 1, 2003.

The ISO states that this filing has been served upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting the filing on the ISO Home Page.

Comment Date: January 10, 2003.

20. Southern Company Services, Inc.

[Docket No. ER03–311–000]

Take notice that on December 20, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company (APC), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of the Interconnection Agreement between Blount County Energy, LLC and APC (Service Agreement No. 432 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5). An effective date of November 21, 2002 has been requested.

Comment Date: January 10, 2003.

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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (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. 03–180 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

December 30, 2002.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–1932–004.

c. *Date filed:* December 6, 2002.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Lytle Creek Project.

f. *Location:* On Lytle Creek, in the Town of Devore, San Bernardino County, California. The project occupies 29.06 acres of land within the San Bernardino National Forest.

g. Filed Pursuant to: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Nino J. Mascolo, SCE, 2244 Walnut Grove Ave., Rosemead, California 91770 (626) 302–4459.

i. *FERC Contact:* Jon Cofrancesco, (202) 502–8951, *jon.cofrancesco@ferc.gov*.

j. Deadline for filing comments: January 14, 2003 Reply comments due January 24, 2003. This extends the 20-day comment period, provided by 18 CFR 385.602(f)(2).

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1932–004 to all comments.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. Description of Filing: SCE filed the Offer of Settlement on behalf of itself, the U.S. Forest Service (USFS), and Fontana Union Water Company. The purpose of the Offer of Settlement is to resolve among the signatories project bypass flow and stream channel management issues associated with the USFS's Final 4(e) Conditions and the relicensing of the Lytle Creek Project. The signatories ask the Commission to accept the Offer of Settlement and incorporate the terms of Appendix A to the Settlement Agreement into any new license issued for the project.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room 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 field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–127 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Unlicensed Project Review and Soliciting Comments, Protests and Motions To Intervene [1]

December 30, 2002.

Take notice that the following review has been initiated by the Commission:

a. *Review Type:* Unlicensed Project.

b. *Docket No:* UL02–2–000.

c. *Owner:* Indian River Power Supply LLC.

d. *Name of Project:* Russell/Westfield Paper Company Dam Project.

e. *Location:* The project is located on the Westfield River, in the town of Russell, Hampden County, Massachusetts. This project does not occupy federal lands or tribal lands.

f. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov*.

g. *Deadline for filing comments, protests, and/or motions to intervene:* January 31, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*.

Please include the docket number (UL02–2–000) on any comments, protests, or motions to intervene filed.

h. Pursuant to section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. 817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it (1) Is located on a navigable water of the United States; (2) occupies lands of the United States; (3) utilizes surplus water or water power from a government dam; or (4) is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

i. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

j. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

k. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular review.

l. Agency Comments—Federal, state, and local agencies are invited to file comments on the described review. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–129 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

[1] The purpose of this notice is to gather information to determine whether the existing project meets any or all of the jurisdictional criteria noted in paragraph (h).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 30, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room 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 field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Exempt Requester

[Docket No. Date Filed Presenter]

1. RP00–241–000 11–18–02 John F. Riordan
2. RP00–241–000 12–9–02 James H. Farrell, Jr.
3. CP02–396–000 12–20–02 Inge S. Terrill, M.En.
4. Project No. 2069–007 12–26–02 Steven L. Spangle.
5. Project No. 2086–000 12–26–02 Thomas T. Taylor

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–128 Filed 1–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7435–7]

Nutrient Criteria Development; Notice of Ecoregional Nutrient Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of ecoregional nutrient criteria for lakes and reservoirs, and rivers and streams.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) announces two actions: (1) The finalization of nine section 304(a) ecoregional nutrient criteria documents for lakes and reservoirs, and rivers and streams within specific geographic regions (ecoregions) of the United States; and (2) a request for significant scientific information on three new section 304(a) ecoregional nutrient criteria documents. These documents serve as recommendations for States, Territories and authorized Tribes [1] to use as they develop nutrient criteria to protect designated uses and adopt these criteria into water quality standards.

For Which New Documents Is EPA Requesting Significant Scientific Information From the Public?

EPA invites the public to provide scientific views on three new ecoregional nutrient criteria documents: Lakes and reservoirs in ecoregions 1 and 10, and rivers and streams in ecoregion 13. EPA requests significant scientific information pertaining to the derivation of the draft criteria. EPA will accept significant scientific information submitted to the Agency within 90 days of publication of this notice in the **Federal Register**. Written significant information to: Robert Cantilli, U.S. EPA, Health and Ecological Criteria Division (4304), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington DC 20460. You may also send comments by e-mail to: *cantilli.robert@epa.gov*.

What Are the Criteria Recommendations for These Three Ecoregions?

AGGREGATE ECOREGIONAL (AGG. ER) CRITERIA RECOMMENDATIONS

Parameter	Agg. ER I	Agg. ER X	Agg. ER XIII
TP µg/L	55.00	60.00	15.00
TN mg/L	*0.66	0.57	1.44
Chl a µg/L	4.88	5.47	
Secchi/Turbidity**	2.55	0.77	1.49

*Calculated—a value for TN was not available, so TN was calculated based on measurements of Total Kjeldahl Nitrogen (TKN), and Nitrate + Nitrite (NO_2+NO_3).

**Secchi depth (m) is applicable to the values in Agg. ER's I and X. Turbidity (FTU) is applicable to Agg. ER XIII.

Which Documents Are Final?

The nine documents being finalized today represent nutrient criteria recommendations for lakes and reservoirs in ecoregions 3, 4, 5, and 14 and nutrient criteria recommendations for rivers and streams in ecoregions 1, 4, 5, 8, and 10. EPA announced the availability of these documents in the **Federal Register** on February 28, 2002. These documents have undergone external peer review and have been reviewed by the public.

What Are the Nutrient Criteria Recommendations for Those Ecoregions?

The following tables summarize criteria recommendations for lakes and reservoirs and rivers and streams, respectively. Table 3 of each document also provides values for each of the subecoregion (level III) within each Aggregate ecoregion.

AGGREGATE ECOREGIONAL (AGG. ER) CRITERIA RECOMMENDATIONS FOR LAKES AND RESERVOIRS

Parameter	Agg. ER III	Agg. ER IV	Agg. ER V	Agg. ER XIV
TP µg/L	17.00	20.00	33.00	8.00
TN mg/L	0.40	0.44	0.56	0.32
Chl a µg/L	3.40	2.00 (S)	2.30 (S)	2.90
Secchi (m)	2.70	2.00	1.30	4.50

Chl a—Chlorophyll a measured by Flourometric method, unless specified. S is for Spectrophotometric.

[1] Hereafter, this **Federal Register** Notice refers to these entities as ''States and authorized Tribes.'' Throughout this document, reference to States and authorized Tribes is intended to include Territories.

AGGREGATE ECOREGIONAL (AGG. ER) CRITERIA RECOMMENDATIONS FOR RIVERS AND STREAMS

Parameter	Agg. ER 1	Agg. ER IV	Agg. ER V	Agg. ER VIII	Agg. ER X
TP µg/L	47.00	23.00	67.00	10.00	*128
TN mg/L	0.31	0.56	0.88	0.38	0.76
Chl a µg/L	1.80	2.40	3.00	0.63	2.10(S)
Turb (FTU)	4.25	4.21	7.83	1.30	17.50

*This number appears inordinately high and may either be a statistical anomaly or reflects a unique condition. In any case, further regional investigation strongly encouraged to determine the sources, i.e., measurement error, notational error, statistical anomaly, natural enriched conditions, or cultural impacts (impacts from human activities).

Turb = Turbidity, FTU are nephelometric turbidity units, calibrated with formazin suspension.

What were the Main Submissions of Significant Scientific Information Provided by the Public?

Many of the concerns raised by the public about EPA's approach for developing nutrient criteria were raised earlier during the development of EPA's Technical Guidance Manuals. At that time, questions were raised about EPA's use of a statistical derivation of a reference condition. EPA continues to believe these approaches are reasonable for the purpose of making today's criteria recommendations. The Science Advisory Board (SAB) endorsed the reference condition approach used by EPA. The SAB stated in its review of ''Biological Criteria: Technical Guidance for Streams and Small Rivers'' (EPA, 1993) that ''the definition of reference condition using reference sites is appropriate when used in conjunction with historical data, empirical models, and expert opinion/consensus.'' EPA's Nutrient Criteria Program later adopted the reference condition approach and continues to recommend it in all of its nutrient criteria guidance manuals. Additionally, the statistical derivation approach to developing nutrient criteria was favorably reviewed by peer reviewers as well. Consequently, EPA did not change its fundamental approach to nutrient criteria development or change the documents significantly beyond responding to comments of peer reviewers. Following is a summary of the most significant scientific information submitted by the public. The issues are grouped by topic, and then followed by EPA's response:

Percentile Approach

(1) The criteria are based on a statistical analysis of current nutrient levels in the Nation's waters rather than on the latest scientific knowledge and therefore are inconsistent with section 304(a) of the Clean Water Act.

(2) The use of the 25th percentile of all data or the 75th percentile of all reference data as criteria by States is undocumented, not scientifically valid, and results in meaningless numerical criteria values.

(3) Many data gaps exist in the nutrient database (for example a lake with only one reading for a parameter in a given year). Some screening techniques should have been done so that only those waterbodies were included for which there are sufficient representative data.

(4) The statistical approach used to develop the nutrient criteria is statistically flawed because it ignores the relationship between nutrient levels and in-stream/in-lake effects. As a result, there is no way of knowing the environmental benefit or the level of protection of designated uses gained by attaining the nutrient criteria levels set forth in the documents. As a result, EPA's statistical derivation of numerical nutrient criteria are meaningless to real world situations and are not helpful in making watershed management decisions, TMDL allocations, or in developing Water Quality Standards for nutrients at the State level. Therefore, they should be withdrawn.

EPA Response: The mean, median and mode are measures of central tendency commonly used in science to represent the distribution of a population of observations. The frequency distribution approach is not used to establish criteria; rather it is used to determine one of the components of a criterion, the reference condition. This reference condition is one element of a criterion which should be considered along with historical background information, possible model extrapolations of data, and consideration of possible downstream impacts on those waters by a regional panel of experts (Regional Technical Assistance Group—RTAG).

Further, the scientific community uses frequency distributions as a common basic interpreter of data with the upper and lower quartiles as an admittedly subjective, but traditional, approach to viewing the extent of a distribution about a central tendency. It is not mandatory or expected that the reference condition so derived be translated directly into a criterion. The selection of an upper quartile (or lower quartile with mixed water quality samples) is also consistent with the EPA policy to set levels protective of the majority of waters and has been peer reviewed both by EPA's SAB and external peer reviewers of our water body type technical guidance.

Finally, EPA's technical guidance manuals provide examples of alternate approaches to frequency distributions to assess reference conditions and determine relationships among causal response variables.

Model Based Approach

The percentile-based nutrient criteria proposed by EPA are acceptable only as a way to initiate a model-based, decision-theoretic approach to standard setting (as described in submission) to be undertaken by the effected States and Tribes with the assistance of EPA.

EPA Response: The presumption underlying EPA's use of a reference condition approach is that reference conditions reflect conditions conducive to the protection of most aquatic life in the given water body type and geographic region. The upper quartile of the reference data distribution is an accommodation to variability of the reference condition, and the lower quartile of a mixed sample is an effort to approach this reference condition when insufficient a priori sites exist. Therefore, the percentiles serve as recommended starting points to be further refined by in the absence of refinements that may be employed by the States, authorized Tribes and RTAGs.

Need for Site Specific Criteria

(1) Establishing a single nutrient criterion for all waters of a geographically diverse region based on inadequate data is not an appropriate approach. Numeric criteria should be developed at a site-specific level.

(2) Regarding the chlorophyll standard: annual cycle of circadian photo-periods vary significantly from southern Georgia to southern Maine. Hours of daylight affect the growth of the chlorophyll in a water body not only in photons activating chlorophyll but in

water temperature. It is difficult to understand how a single standard for chlorophyll or Secchi depth could be set over this geographic distance.

(3) The recommended criteria are lower than concentrations that may be needed to support fisheries and may result in a reduction of fish biomass.

EPA Response: EPA is using an ecoregion approach as an initial attempt to assess nutrient conditions in a broad geographic context. The Agency encourages RTAGs, including member States and authorized Tribes, to refine and further subdivide the initial ecoregions. If time and resources permit, States and authorized Tribes should also consider adopting nutrient criteria that are tailored to specific sites. EPA believes that recommending nutrient criteria on an ecoregion basis, with the use of ecoregional reference conditions, is a reasonable alternative to recommending a single nation-wide criterion that may fail to account for regional variability or to recommending criteria on an individual water body basis, which would be very resource-intensive. The EPA SAB has endorsed this region and water body-type specificity for biological criteria, and nutrient criteria share a similar ecological orientation.

One of the concerns expressed to EPA was that if the recommended nutrient criteria were met, there would not be sufficient nutrients to support fisheries. Generally, however, cultural eutrophication has been identified by States' section 303 (d) reports as one of the top national water quality problems. Where enrichment is documented as beneficial by regional specialists, EPA recommends that nutrient criteria be developed to promote the removal of that amount of ambient total nitrogen and phosphorus in excess of optimal fish production as determined by consultation of the RTAG with State and Federal fisheries biologists and water resource managers.

Total Nitrogen Criteria

Total Nitrogen criteria are not necessary and should not be required unless EPA can show site-specific reasoning for applying nitrogen criteria to all water bodies.

EPA Response: As a threshold matter, it should be noted that EPA's choice of parameters and criteria values are recommendations. The documents announced today impose no requirements. States and authorized Tribes have considerable flexibility in adopting nutrient criteria, provided that the criteria meet the requirements of the CWA and EPA's regulations (that is, they are based on sound scientific rationale and contain sufficient parameters to protect the designated uses).

With respect to EPA's recommendation that States and authorized Tribes adopt nutrient criteria for nitrogen, EPA notes that while phosphorus is often considered the limiting nutrient determining the extent of vegetative growth in fresh waters, nitrogen is often considered to be the limiting nutrient in the lower reaches of estuaries and in coastal marine waters. However, there are cases where phosphorus limits algal growth in estuaries and nitrogen performs a similar role in some freshwater systems. While nitrogen itself will not usually cause water quality impairments in the near-field in phosphorus-limited systems, if phosphorus supplies are reduced to attenuate symptoms of eutrophication within freshwater segments of a given river system, corresponding reductions in freshwater algal blooms will allow the highly soluble dissolved forms of nitrogen to be transported downstream. This downstream nitrogen transportation to estuaries or costal waters may support larger algal blooms resulting in water quality impairments. The practice of setting criteria for only nitrogen or phosphorus in a given region could displace the responsibility for nutrient abatement from the area of the source to a downstream jurisdiction. This places an undue burden on the recipient of this imported material and increases the abatement costs because source control is lost as a management option. EPA suggests, therefore, that where downstream effects take place, States and Tribes describe technologies or best management practices in their plans to begin nitrogen control.

Grouping of Reservoirs and Lakes

The final document should clarify whether Reservoir means impounded stream or river. If impoundments were sampled with natural lakes, the 75th percentile number may be too high as a standard for historic conditions in natural lakes.

EPA Response: EPA agrees that, if possible, reservoirs should not be grouped with lakes and recommends in the Technical Guidance Manual that, wherever feasible, criteria for reservoirs and lakes should be developed separately. Using the National Nutrient Database, one can separate data by lake or reservoir and determine reference conditions for each.

How Can I Get Copies of These Documents?

You can get copies of the set of three new criteria documents or any nutrient criteria document from the U.S. National Service Center for Environmental Publications (NSCEP), 11029 Kenwood Road, Cincinnati, OH 45242; (513) 489–8190 or toll free (800) 490–9198. The documents are also available electronically at *http://www.epa.gov/waterscience/standards/nutrient.html*. The waterbody-specific technical guidance manuals are also available from EPA's nutrient Web site. EPA's Office of Water, Office of Science and Technology prepared this document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

Can the Public Continue To Provide Input After the Documents Are Finalized?

EPA encourages the public to provide additional scientific information that could help States and or authorized Tribes refine these recommended nutrient water quality criteria. EPA identified specific sections within each document where the public could greatly assist States and authorized Tribes in the task of augmenting the database for deriving ecoregional nutrient water quality criteria. For example, the public can provide information about the historical conditions and trends of the water resources within an ecoregion related to eutrophication resulting from human activities. EPA will forward all comments received on a particular ecoregional criterion or set of criteria to the appropriate State or authorized Tribe to help foster water quality criteria refinement.

SUPPLEMENTARY INFORMATION:

What Are Water Quality Criteria?

Section 304(a) of the Clean Water Act (CWA) requires the EPA to develop and publish and, from time to time, revise criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria recommendations developed under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water.

What Is the Purpose of These Documents?

These documents give State and Tribal decision makers and others information to support the development

of numeric nutrient criteria for lakes and reservoirs and rivers and streams within several different nutrient ecoregions. An ecoregion is a geographic area with assumed relative homogeneity of ecological characteristics. EPA's section 304(a) criteria recommendations for phosphorous, total nitrogen, chlorophyll a and some form of water clarity, *i.e.* Secchi depth or turbidity represent reference conditions of surface waters that are minimally affected by human activities and provide for the protection and propagation of aquatic life and recreation.

These recommendations do not substitute for the CWA or EPA's regulations; nor are the documents themselves regulations. Thus, they cannot impose legally binding requirements on EPA, States, Indian tribes or the regulated community. Indeed, there may be other approaches that would be appropriate in particular situations or circumstances. When EPA reviews a new or revised nutrient water quality criterion submitted by a State or authorized Tribe under CWA section 303(c), EPA will decide to approve or disapprove that submission on a case-by-case basis and will be guided by the applicable requirements of the Clean Water Act and implementing regulations, taking into account comments and information presented at that time by interested persons regarding the appropriateness of applying these recommendations to the particular situation.

Why Does EPA Develop Ecoregional Nutrient Criteria?

States and authorized Tribes consistently identify excessive levels of nutrients as a major reason why as much as half of the surface waters surveyed in this country do not meet water quality objectives, such as full support of aquatic life. In 2000, EPA published nutrient criteria technical guidance manuals for lakes and reservoirs and for rivers and streams. In 2001, EPA published a draft guidance manual for estuarine and coastal marine waters. These manuals provide techniques for assessing nutrient conditions as well as methods for developing nutrient criteria for specific water body types. These and related documents are also available from EPA's nutrient Web site: *http://www.epa.gov/waterscience/standards/nutrient.html.* EPA is developing a guidance manual for wetlands.

What Is the Total Set of Ecoregional Nutrient Criteria That EPA Has Published?

On January 9, 2001, EPA announced the availability of ecoregional nutrient criteria documents for lakes and reservoirs in eight ecoregions, for rivers and streams in eight ecoregions (several of which overlap with the eight ecoregions for lakes and reservoirs), and for wetlands in one ecoregion. Those ecoregions were chosen based on the availability of nutrient data within each ecoregion. On February 28, 2002, EPA announced the availability of nine ecoregional nutrient criteria documents for lakes and reservoirs, and rivers and streams. Today, EPA announces the availability of three additional ecoregional nutrient criteria documents for lakes and reservoirs, and rivers and streams. This brings the total number of ecoregional nutrient criteria documents to 29 and results in nutrient criteria covering almost 100% of the freshwater waterbodies of the U.S. (excluding wetlands).

EPA also provided guidance on development and adoption of nutrient criteria into water quality standards. More recently, on November 14, 2001, Geoffrey H. Grubbs, Director of the Office of Science and Technology, in EPA's Office of Water provided this guidance to EPA, and State and Interstate Water Program Directors. This memorandum can be viewed electronically at: *http://www.epa.gov/waterscience/standards/nutrient.html.*

Dated: December 20, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 03–176 Filed 1–3–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–7435–8]

Nutrient Criteria Development; Notice of Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters.

SUMMARY: The Environmental Protection Agency announces the availability of a final nutrient criteria technical guidance manual for estuaries and coastal marine waters. This document gives State and Tribal water quality managers and others guidance on how to develop numeric nutrient criteria for estuaries and coastal marine waters. This document does not contain site-specific numeric nutrient criteria for any estuary or coastal marine water. This guidance was developed to help States and Tribes establish nutrient criteria. States and Tribes are in the best position to consider site-specific conditions in developing nutrient criteria. While this guidance contains EPA's scientific recommendations regarding defensible approaches for developing regional nutrient criteria, this guidance is not regulation. Thus it does not impose legally binding requirements on EPA, States, Territories, Tribes, or the public. States, Territories, and authorized Tribes retain the discretion to adopt, where appropriate, other scientifically defensible approaches to developing regional or local nutrient criteria that differ from these recommendations.

We are issuing this technical guidance in a manner similar to that used to issue new and revised criteria (see **Federal Register**, December 10, 1998, 63 FR 68354 and in the EPA document titled, National Recommended Water Quality—Correction EPA 822–Z–99–001, April 1999). EPA notified the public about the availability of the draft guidance manual and peer review on October 10, 2001 (66 FR 51665). At that time, the Agency solicited views from the public on issues of science pertaining to the information contained in the draft technical guidance manual. EPA considered the scientific views from the peer reviewers and the public and has revised the document accordingly. The completed document is now available.

ADDRESSES: You can get copies of the completed document entitled ''Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Waters'' from EPA's National Service Center for Environmental Publications (NSCEP) by phone at (513) 489–8190 or toll free (800) 490–9198 or by e-mail to: *ncepiwo@one.net,* or by conventional mail to NSCEP, 11029 Kenwood Road, Cincinnati, OH 45242. The document is also available electronically at *http://www.epa.gov/OST/standards/nutrient.html.*

FOR FURTHER INFORMATION CONTACT: Dr. David Flemer, USEPA, Health and Ecological Criteria Division (4304T), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or call (202) 566–1101; fax (202) 566–1139; or e-mail *flemer.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Are Nutrient Criteria Technical Guidance Manuals?

Nutrient Criteria Technical Guidance Manuals are documents that give States and Tribes information to help develop water quality criteria and standards for nutrients, identify water quality impairments, and evaluate their success in reducing cultural eutrophication. They are intended to provide a series of steps leading to the development of nutrient criteria for a specific waterbody type.

EPA began to implement a National Strategy to Develop Regional Nutrient Criteria in 1998 to address enrichment problems. The *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs, First Edition* (EPA–822–B00–001) was the first of a series of waterbody-type specific manuals produced to help States, and Tribes establish ecoregionally appropriate nutrient criteria. EPA also developed a manual for rivers and streams (*Nutrient Criteria Technical Guidance Manual: Rivers and Streams*—EPA–822–B–00–002, and is developing a manual for wetlands. In addition to these waterbody-type specific manuals, EPA is developing nutrient criteria guidance under section 304(a) for each of the 14 ecoregions it identified in the continental United States. EPA expects States and Tribes to use the manuals, other information and local expertise to refine EPA's 304(a) nutrient criteria guidance so that their nutrient water quality criteria are tailored to local conditions. To help States and Tribes, to verify section 304(a) nutrient criteria guidance, and to provide national consistency wherever possible, EPA established Regional Technical Assistance Groups (RTAGs). RTAGs are a collection of EPA, State, Tribal representatives who work together to develop more refined ecoregional nutrient criteria, using the forthcoming section 304(a) guidance as a starting point. (EPA is also using data and expertise provided by the RTAGs to develop its section 304(a) nutrient criteria guidance for the 14 ecoregions it identified.) EPA expects the RTAGs to use the processes described in the waterbody-type specific manuals to develop recommended nutrient criteria on an ecoregional or more refined basis (such as subecoregion, coastal province, State or Tribe-level more defined class of estuary/coastal marine water). Today's manual for estuarine and coastal marine waters also explains how States or Tribes can adopt nutrient water quality standards based on the criteria values recommended by the EPA and/or RTAGs.

How Did EPA Involve the Public in Revising the Estuarine Coastal Guidance Manual?

In following the Agency's process for developing criteria and other guidance, EPA notified the public of the availability of the peer reviewed draft of the Estuarine Coastal Nutrient Criteria technical Guidance Manual on October 10, 2001 (66 FR 51665). EPA asked for views from the public on issues of science pertaining to information contained in the guidance manual. EPA considered the scientific views from the peer review and the public to revise the document.

Is the Completed Document Different Than the Draft Document?

In addressing the peer reviewers' comments and submissions of significant scientific information from the public, EPA made revisions to the draft document. Many of the submissions from the public were also presented by the peer reviewers, and these were addressed in the final document. To review the complete set of peer review comments and scientific views provided by the public, together with EPA's responses, go to *http://epa.gov/waterscience/standards/nutrient.html*.

A number of peer review comments and scientific views presented by the public questioned the use of a frequency distribution approach to develop a reference condition. The manual was rewritten to offer several methods for developing reference conditions, including several that do not use a frequency distribution. In addition, the manual is now more clear on distinguishing reference condition from criteria. Reference condition is one element of criteria derivation that RTAGs should consider with historical background information, possible model extrapolations of data, and possible downstream impacts.

Another submission questioned the utility of EPA's approach in developing estuarine/coastal criteria, since many reference conditions no longer exist. EPA added language to the guidance acknowledging that pre-Columbian, pristine conditions are rare and that the goal of the nutrient criteria setting process is to strive for a reference condition value and criteria that represent the most natural condition possible (as measured from sites having the least amount of human influence). Since extensive degradation of estuaries systems has been reported, the guidance manual describes four options for establishing reference conditions in estuaries (one option is presented for coastal waters). The manual also places greater emphasis on historical information because the reference condition of estuaries may be degraded, and estuaries, in particular, can seldom be classified by using a frequency distribution.

Several scientific views stated that the nutrient criteria that might be derived using the guidance manual do not support specific designated uses. It is true that the potential criteria derived may not be specific to a designated use. Rather, because they are reference condition-based, they should support the broad array of aquatic life uses in accordance with the Clean Water Act. As stated in the final guidance manual, the criteria derived using the manual are intended as benchmarks for comparison when a State or Tribe prepares their own criteria based on specific uses.

An additional public viewpoint indicated that nutrient criteria as developed by EPA are unnecessary because States already have criteria identifying conditions associated with eutrophication, such as dissolved oxygen, pH, and turbidity. States have used response variables such as dissolved oxygen, pH, and turbidity to reveal nutrient problems in their waters, but the root cause of eutrophication, as demonstrated by excess primary productivity, is typically nitrogen and phosphorus. For more effective prevention, it is important to measure the level and extent of the causal agents. The criteria are based directly on these primary causal elements of total nitrogen and phosphorus plus two early response variables. These are algal biomass (*e.g.*, chlorophyll-a for microalgae, dry mass for macroalgae) and water clarity, which most often indicate the early vegetative response to nutrient enrichment. Because many estuaries experience or may experience hypoxia, dissolved oxygen was added as an additional response variable.

Dated: December 20, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 03–175 Filed 1–3–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 7, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Acting Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—December 20, 2002 (Open)

B. Reports

—Corporate Approvals
—Risk Analysis Report—Fourth Quarter Fiscal Year 2002
—Basel II and Capital Initiatives

C. New Business—Other

—**Federal Register** Notice—Draft Amended and Restated Market Access Agreement
—**Federal Register** Notice—Loan Syndications

Dated: January 2, 2003.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 03–293 Filed 1–2–03; 2:09 pm]

BILLING CODE 6705–01–P 1

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 27, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0715.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,832.

Estimated Time Per Response: .50–100 hours.

Frequency of Response: On occasion, annual, biennial, and one-time reporting requirements, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 672,808 hours.

Total Annual Cost: $229,520,000.

Needs and Uses: The requirements implement the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use, disclose, or permit access to CPNI, without customer approval, under certain conditions. Many uses of CPNI require either opt-in or opt-out customer approval, depending upon the entity using the CPNI and the purpose for which it is used.

OMB Control No.: 3060–0835.

Title: Ship Inspections.

Form Nos.: FCC Forms 806, 824, 827, and 829.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 1,210.

Estimated Time Per Response: .084–4 hours.

Frequency of Response: On occasion, annual and every five year reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 5,245 hours.

Total Annual Cost: N/A.

Needs and Uses: The Communications Act requires the Commission to inspect the radio installations of large cargo ships and certain passenger ships at least once a year to ensure that the radio installation is in compliance with the requirements of the Act. Additionally, the Communications Act requires the inspection of small passenger ships at least once every five years. The Commission allows FCC-licensed technicians to conduct these inspections.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–161 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

December 20, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 5, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0690.

Title: Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands.

Form Nos.: FCC Forms 415 and 415–T.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5,000.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 75,625 hours.

Total Annual Cost: $5,000,000.

Needs and Uses: The collection of information is necessary because of the Commission's Rules regarding the 37.0–38.6 GHz and 38.6–40.0 GHz bands. The rules implement the use of a channeling plan, and licensing and technical rules to fixed point-to-point microwave operation in the 37 and 39 GHz bands. This requirement will facilitate provision of communications infrastructure for commercial and private mobile radio operations and competitive wireless local telephone service. Without this information, the Commission would not be able to carry out its statutory responsibilities.

OMB Control No.: 3060–0692.

Title: Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use.

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 590 responses.

Estimated Time Per Response: 1–4 hours.

Frequency of Response: On occasion, annual and other reporting requirements, third party disclosure requirement.

Total Annual Burden: 590 hours.

Total Annual Cost: $51,000.

Needs and Uses: The Federal Communications Commission (FCC) adopted rules that redesignated portions of the 17.7–20.2 GHz band (18 GHz band) among the various currently allocated services to make more efficient use of this spectrum and to better accommodate the operational needs of licensees. On 1/31/02, the FCC adopted a Notice of Proposed Rulemaking (NPRM), in IB Docket No. 02–19, that requires licensees to amend their applications, submit milestone certifications and annual reports to the Commission to comply with new rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–162 Filed 1–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011835.

Title: CMA CGM/CNAN Space Charter, Pooling and Cooperative Working Agreement.

Parties: CMA CGM, Societe Nationale de Transports Maritimes (''CNAN'').

Synopsis: The agreement authorizes the parties to exchange space on a first-come, first-served, space available basis for carriage of bulk cargoes on vessels they intend to time charter and operate in the trade between the U.S. East and Gulf Coasts from Eastport, Maine, to Brownsville, Texas, and countries bordering the Mediterranean and Black Seas plus Portugal and the Atlantic coast of Morocco. Initially, CMA CGM will provide one vessel, and CNAN will provide two vessels. The parties are also authorized to place containers on these vessels on a space available basis. Regarding the bulk cargoes, the parties will be pooling revenue, whereby the total freight revenues less the variable costs will be apportioned between the parties based on the number of vessels each party contributes. Finally, the parties are authorized to discuss rates and conditions in the trade and service contracts.

Agreement No.: 201075–003.

Title: Port of Oakland and Maersk Pacific, Ltd.

Parties: City of Oakland, Maersk Pacific, Ltd.

Synopsis: This amendment authorizes Maersk Pacific to operate transtainers for cargo container movement purposes within a specifically delineated area of the Premises without regard to the load limits contained in section 3.7 of the agreement.

Dated: December 30, 2002.

By Order of the Federal Maritime Commission.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 03–134 Filed 1–3–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–32]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: The Role of Power and Control in Intimate Partner Violence—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC), plans to draw a sample of individuals convicted of battering in the Dallas County Domestic Violence Court, and a sample of men living in Dallas County. The study participants, which will include two samples of men, will be asked to complete a survey that will utilize information collection instruments and methods developed and tested by experts in the fields of psychology and sociology. The study will include psychological assessments of attachment, depression, anger, and sociological assessments of peer support for violence, attitudes toward violence, and attitudes toward sex roles.

The data will be collected to further understand the psychological and sociological correlates of battering (*e.g.*, male battering of female partners), which will, in turn, assist in developing models for intervention programs.

The only cost to the respondents is the time involved to complete the survey.

Respondents	Number of respondents	Number of responses/ respondent	Average Burden/ response (in hours)	Total burden (in hours)
Men convicted of battering in Dallas County & sampling of men in Dallas County	400	1	60/60	400
Total	400	1	60/60	400

Dated: December 30, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–143 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–16–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Disease Surveillance Program—I. Case Reports (0920–0009)—Extension—National Center for Infectious Disease (NCID), Centers for Disease Control and Prevention (CDC). Formal surveillance of 20 separate reportable diseases has been ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis and bacteremia, dengue, hantavirus, HIV/AIDS, Idiopathic CD4+T-lymphocytopenia, Kawasaki syndrome, Legionellosis, leprosy, lyme disease, malaria, Mycobacterium avium Complex Disease, plague, Q Fever, Reye Syndrome, tick-borne Rickettsial Disease, toxic shock syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment. It is also used to recommend target areas in most need of vaccinations for certain diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total estimated annualized burden is 34,097 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden/ respondent (in hours)
Health Care Workers	55	111.10	5.58

Dated: December 30, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–147 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment: Notice of Charter Establishment

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the CDC, HRSA Advisory Committee on HIV and STD Prevention and Treatment of the Centers for Disease Control and Prevention, and the Health Resources and Services Administration of the Department of Health and Human Services, has been Chartered for a 2-year period beginning November 25, 2002, through November 25, 2004.

For further information, contact Ron Valdiserri, M.D., Executive Secretary, CDC, Advisory Committee on HIV and STD Prevention, 1600 Clifton Road, NE, m/s E–07, Atlanta, Georgia 30333. Telephone 404/639–8002, or fax 404/639–8600.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 20, 2002.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–170 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee conference call meeting.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE).

Time and Date: 1 p.m.–4 p.m., January 23, 2003.

Place: The conference call will originate at the National Center on Birth Defects and Developmental Disabilities (NCBDDD), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Secretary is authorized by the Public Health Service Act, Section 399G, (42 U.S.C. Section 280f, as added by Pub. L. 105–392) to establish a National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect to: (1) Foster coordination among all governmental agencies, academic bodies and community groups that conduct or support Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Effect (FAE) research, programs and surveillance; and (2) to otherwise meet the general needs of populations actually or potentially impacted by FAS and FAE.

Matters To Be Discussed: The Task Force will convene by conference call to: (1) Discuss and deliberate a request to endorse recommendations on FAS prevention by the Teratology Society; (2) further discuss activities proposed by the Center for Science in the Public Interest on issues regarding the labeling of alcohol beverages by the Bureau of Alcohol, Tobacco, and Firearms; and (3) discuss progress on a letter to the Surgeon General's Office requesting that he reissue the Federal Advisory against drinking during pregnancy. Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 1 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–800–713–1971 and enter conference code 908417. You will then be automatically connected to the call.

Contact Person for More Information: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 4700 Buford Highway, NE, (F–49), Atlanta, Georgia 30333, telephone 770/488–7372, fax 770/488–7361.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: December 30, 2002.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–142 Filed 1–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–79]

Notice of Submission of Proposed Information Collection to OMB: Request for Proposals—Contract Administrators for Project Based Section 8 Housing Assistance Payments (HAP) Contracts

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0528) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice

lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Request for Proposals—Contract Administrators for Project Based Section 8 Housing Assistance Payments (HAP) Contracts.

OMB Approval Number: 2502–0528.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The requested information is needed for HUD's selection of contract administrators to provide contract administration services for project based Section 8 Housing Assistance Payments (HAPS) contracts currently being administered directly by HUD.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion, Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	63	10		5.6		3,540

Total Estimated Burden Hours: 3,540.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 27, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–188 Filed 1–3–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–80]

Notice of Submission of Proposed Information Collection to OMB: Screening and Eviction for Drug Abuse and Other Criminal Activity

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0232) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Screening and Eviction for Drug Abuse and Other Criminal Activity Assisted Units.

OMB Approval Number: 2577–0232.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This collection of information implements statute. This collection of information implements statute giving Public Housing Agencies (PHAs) the tools for adopting and implementing fair, effective, and comprehensive policies for screening out applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity. A PHA that administers a Section 8 or public housing program under an Annual Contributions Contract (ACC) with HUD may request criminal conviction records from any law enforcement agency concerning an adult member of a household applying for admission to a public housing or Section 8 program.

Respondents: State and Local Governments (Public Housing Agencies).

Frequency of Submission: On occasion of application for admission.

	Number of respondents	Annual responses	x	Hours per response	=	Burden Hours
Reporting Burden	8,600	8,600		1.3		10,850

Total Estimated Burden Hours: 41,385.

Status: Extension, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 27, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–189 Filed 1–3–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services (COPS)

Agency Information Collection Activities: Proposed Collection; Comments Requested.

ACTION: 60-day notice of information collection under review: extension of a currently approved collection department initial report.

The Department of Justice Office of Community Oriented Policing Services has submitted the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 7, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Department Initial Report (DIR).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: There is no agency form number. The U.S. Department of Justice Office of Community Oriented Policing Services (COPS) is sponsoring this information collection.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Recipients of the Funding Accelerated for Small Towns (FAST) program, the Accelerated Hiring, Education and Deployment (AHEAD) program, and/or Universal Hiring Program (UHP) grants. Other: Applicants of the current hiring grant program, UHP, or interested parties. Abstract: The DIR is a collection instrument that the COPS Office uses to establish a baseline to evaluate the progress of agencies awarded grants under the FAST, AHEAD, and UHP grant programs.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The DIR will be sent to approximately 500 grantees per year. The estimated amount of time required for the average respondent to complete and return the form is 1.5 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 875 estimated burden hours associated with this collection.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: December 31, 2002.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–197 Filed 1–3–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA 03–100]

H–1B Technical Skills Training Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of procedures for grant applications for H–1B technical skills training grants.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of approximately $200 million in grant funds for skill training programs for unemployed and employed workers. These grants are financed by a user fee paid by employers to bring foreign workers into the U.S. under a new H–1B nonimmigrant visa. As part of the H–1B nonimmigrant visa program, this technical skills training program was authorized under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended. The grants are a long-term solution to domestic skill shortages in high skill and high technology occupations. H–1B technical skills grants are focused on addressing the high skill technology shortages of American businesses; they are not intended to address labor shortages due to reasons other than technical skill shortages. Grant awards will be made only to the extent that funds are available.

Eligible applicants for these grants will be local Workforce Investment Boards (Local Boards) established under section 117 of the Workforce Investment Act (WIA) and representing a local or regional public-private partnership that is comprised of at least one Local Board, one business or business-related non-profit organization such as a trade association, and one community-based organization, higher education institution or labor union that will carry out such programs or projects through One-Stop delivery systems established under section 121 of WIA, or regional consortia of Local Boards.

This notice describes the application submission requirements, the process that eligible entities must use to apply

for funds covered by this solicitation, and how grantees will be selected.

DATES: The grant policies and procedures described in these guidelines are effective immediately, and remain in effect until further notice. Funds are available for obligation by the Secretary of Labor (the Secretary) under 29 U.S.C. 2916. Applications for grant awards will be accepted immediately upon publication of this notice in the **Federal Register**. It is anticipated that review panels will begin to convene to evaluate applications 60 days after publication.

ADDRESSES: Applications must be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ella Freeman, SGA/DFA 03–100, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Ella Freeman, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301. (This is not a toll free number.) You must specifically ask for Ella Freeman.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of grant funds for technical skills training for employed and unemployed American workers. These grants are financed by a user fee paid by employers to bring foreign workers into the U.S. on a temporary basis to work in high skill or specialty occupations. As part of the H–1B non-immigrant visa program, this technical skills training program was established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA 1998) as amended by the American Competitiveness in the Twentieth Century Act of 2000 (ACWIA 2000) and companion legislation. The grants are a long-term solution to domestic skill shortages in high skill and high technology occupations—raising the technical skill levels of American workers so they can take advantage of the new technology-related, high skills employment opportunities. This will, in turn, help businesses reduce their dependence on skilled foreign professionals permitted to work in the U.S. on a temporary basis under the H–1B visa program. H–1B technical skills grants are focused on directly addressing the high skill technology shortages of American businesses; they are not intended to address labor shortages due to reasons other than technical skill shortages. Grant awards will be made only to the extent that funds are available.

The Act creates a two-part eligibility and funding system for the program. Seventy-five (75%) percent of the available grant funds will be awarded to Local Boards established under section 117 of the Workforce Investment Act (WIA) that will carry out such programs or projects through the One-Stop delivery systems established under section 121 of WIA, or regional consortia of Local Boards. Regional consortia of boards may be interstate. Each Local Board or consortium of boards receiving grant funds must represent a local or regional public-private partnership that is comprised of at least (i) One Local Board; (ii) one business or business-related non-profit organization such as a trade association; and (iii) one community-based organization or higher education institution or labor union. This notice governs the process for awarding the 75 percent funds.

The remaining 25 percent of the available funds will be awarded to business partnerships that consist of at least two businesses or a business-related nonprofit organization that represents more than one business. The partnership may also include any educational, labor, community organization, or Local Board. Applicants for the 25 percent funds must explain the barriers they faced in meeting the partnership eligibility criteria for the 75 percent funds—for example, the business partnerships may be on a national, multi-state, regional or rural area basis (such as rural telework programs). The Solicitation for Grant Applications (SGA) governing the competition for the first round of grants for the 25 percent funds was published in the **Federal Register** in December 2001.

Successful applicants under earlier H–1B training grant solicitations are eligible to apply for grants under this competition. Current awardees are encouraged to indicate how their new proposals can provide a different approach or scope to skills training given program improvements developed under the current award. Consideration will be given to grantees which use grant funds to significantly expand their training program or project through such means as training more workers or offering more courses, or to applicants whose training programs or projects expand as a result of increasing collaborations—especially with more than one small business or with a labor-management training program or project.

ACWIA 2000 provides resources for skill training in high skill and high technology occupations that are in demand by U.S. businesses. One key measure of this demand is determined by the number of employer H–1B applications for foreign workers. For example, the occupation with the most current H–1B demand is information technology (IT). Appendix B to this solicitation provides information on the occupations approved under H–1B petitions by the Immigration and Naturalization Service (INS) for Fiscal Year 2001. Applicants should check the INS Web site (*www.ins.gov*) or the Department of Labor's Employment and Training Administration's Web site (*www.doleta.gov/h-1b/*) for the latest INS information on occupations approved under H–1B petitions.

This announcement consists of four parts:

- Part I provides background, basic DOL policies and emphasis, principles of H–1B technical skills grants, and the legislative mandate for technical skills training grants under Section 286(s) of INA, Section 111 of ACWIA 2000, and Section 214(i) of INA.
- Part II describes specific program, administrative and reporting requirements that will apply to all grant awards.
- Part III describes the application process.
- Part IV describes the review process and rating criteria that will be used to evaluate applications for funding.

Part I—Background, DOL Policies and Emphases

A. Background

In response to demands from industries that were experiencing skill shortages in areas such as information technology, Congress enacted the Immigration Act of 1990. This act, implemented in 1992, established the H–1B visa category for non-immigrants who sought to work in high skill or specialty occupations, and set annual limits of 65,000 on the number of H–1B visas granted. In a subsequent effort to help employers access skilled foreign workers and compete internationally, Congress enacted the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA 1998) Pub. L. 105–277 in October 1998. The provisions of ACWIA 1998 created technical skills training grants under the Department of Labor's Employment and Training Administration. ACWIA 1998

was amended by the American Competitiveness in the Twenty-first Century Act of 2000 (ACWIA 2000) Pub.L. 106–313.

High skill and specialty occupations require theoretical and practical application of a body of highly specialized knowledge and sometimes may even require full state licensure to practice in the occupation. These occupations require at least a bachelor's degree or higher and/or experience in the specific specialty. They also may require recognition of expertise in the specialty through progressively responsible positions relative to the specialty occupation.

ACWIA 1998 increased the annual limit on H–1B visas temporarily to 115,000 in fiscal years 1999 and 2000, and to 107,500 in 2001. In addition, a $500 user fee was imposed on employers for H–1B applications. ACWIA 1998 authorized the use of 56.3% of the fee to finance the H–1B Technical Skills Training Grant Program. Grants funded under ACWIA 1998 had the long-term goal of raising the technical skill levels of American workers in order to fill specialty occupations presently being filled by temporary workers admitted to the United States under the provisions of the H–1B visa.

ACWIA 1998 described eligible grant applicants as local Workforce Investment Boards (local Boards) or a consortium of local Boards. Current grantees are local Boards, as established under section 117 of the Workforce Investment Act (WIA), that have been funded to carry out specifically designed high technology skill training programs or projects for employed and unemployed workers through one-stop delivery systems or a regional consortia of local boards, as established under section 121 of the WIA. Regional consortia may be interstate as well as intrastate.

ACWIA 2000, enacted on October 17, 2000, increased the temporary cap to 195,000 H–1B visas annually and extended this higher cap for two additional years, until the end of fiscal year 2003. Separate legislation raised the employer H–1B application fee from $500 to $1,000. ACWIA 2000 authorized the use of 55% of the funds generated by fees to continue the Department of Labor's H–1B Technical Skills Training Grant Program through September 30, 2003.

ACWIA 2000 created two-part eligibility and funding criteria for the new program. Local WIBs are eligible to receive 75% of total funds awarded. These grants provide funds to partnerships consisting of one or more local WIBs, at least one business or business related non-profit (such as a trade association) and one community-based organization (which may be faith-based), higher education institution or labor union. The remaining 25% of funds are made available through grants to eligible partnerships that consist of at least two businesses or a business-related nonprofit organization that represents more than one business. Partnerships may include any educational, labor, community organization, or WIB, but funds may be used only to carry out a strategy that would otherwise not be eligible for funds under the 75% clause due to barriers in meeting partnership eligibility criteria.

The 75 percent funding stream requires a 50 percent match in cash or in kind; the 25 percent portion requires a 100 percent match in cash or in kind. The matching requirement is assessed for the entire Federal grant funding level. Partners cooperating in the proposed project may divide the responsibility for the match among themselves in any way they choose to do so. ACWIA 2000 requires that consideration be given to applicants that provide a specific commitment from other public or private sources, or both, to demonstrate the long-term sustainability of the training program or project after the grant expires.

Eighty percent of the grants are to be awarded to projects that train workers in high technology, information technology, and biotechnology skills. For example, this includes skills needed for software and communications services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, biotechnology and biomedical research and manufacturing, and innovation services. No more than 20 percent may be awarded to projects that train for skills related to any single specialty occupation. A specialty occupation is one that requires at a minimum a college degree or comparable experience. In accordance with ACWIA 2000, the Secretary of Labor must make every effort to fairly distribute grant funds among urban and rural areas and across the different geographic regions of the country.

The technical skills training portion of the law (Section 111) is designed to help both employed and unemployed American workers acquire the requisite technical capabilities in high skill occupations that have shortages. Training generally is aimed at occupations at the H–1B skill levels, which are defined as a bachelor's degree or comparable experience. Under ACWIA 2000, training is not limited to skill levels commensurate with 4-year undergraduate degrees, but can include the preparation of workers for a broad range of positions along a career ladder leading to an H–1B skill level job.

To meet the legislative intent of training American workers to replace foreign workers under the H–1B visa program, technical skills training grants under this SGA must focus on a high level of training and on selected occupations. As shown on Table 1, foreign workers coming to the United States under the H–1B visa program are exceptionally well-educated, nearly 60 percent possess a Bachelor's degree, over 30 percent have a Master's degree, and 10 percent have a Doctorate or Professional degree. With respect to occupations, nearly 60 percent are computer/information technology related occupations, such as programmers, database administrators and systems analysts. The second largest occupational area is architecture, engineering and surveying related occupations. It should be noted that of the education-related area occupations, most are college and university level, not elementary or secondary level. Of the medicine and health related occupations, the largest grouping is physicians and surgeons rather than nurses or other healthcare workers.

ACWIA 2000 requires certain accountability factors. Specifically, the Secretary of Labor is to give consideration to applicants who commit to achieving certain outcome goals for individuals who complete training. These outcome goals are: (1) Hiring or causing the hiring of unemployed trainees; (2) increasing the wages or salary of incumbent workers; or (3) providing skill certifications to trainees or linking the training to industry accepted occupational skill standards, certificates, or licensing requirements. These accountability factors represent a list of possible, desired outcomes or goals rather than contractual requirements. (For example, an applicant may propose a specific goal by designing a technical skills training program that is expected to result in increased wages and the awarding of certifications that document skills acquisition). In accordance with ACWIA 2000, applicants must agree that the project will be subject to evaluation by the Department of Labor and agree to fully cooperate in evaluation studies.

ACWIA 2000 specified that consideration be given to the use of grant funds to demonstrate a significant ability to expand a training program or project through such means as training

more workers or offering more courses or projects resulting from collaborations, especially with more than one small business or with a labor management training program or project, or for a partnership that involves and directly benefits more than one small business.

TABLE 1.—KEY FACTS ABOUT H–1B VISA APPROVED PETITIONS, FISCAL YEAR 2001

	Percent of total
Country of Birth:	
India	48.9
China	8.3
Canada	3.9
Philippines	3.1
United Kingdom	2.9
All other	33.8
Age:	
Under 20	00.0
20–24	11.6
25–29	41.9
30–34	25.8
35–39	12.0
40 and over	8.70
Level of Education:	
Less than Associate's degree	1.2
Associate's degree	0.6
Bachelor's degree	56.8
Master's degree	31.1
Doctorate degree	7.4
Professional degree	3.0
Occupational Area:	
Computer/information technology	58.0
Architecture, engineering and surveying	12.2
Administrative specialties	7.2
Education	5.3
Managers and officials	3.8
Medicine and health	3.4
Life sciences	2.0
Social sciences	1.9
Mathematics/physical sciences	1.7
All other	3.2

Source: *Report on Characteristics of Specialty Occupation Workers (H–1B), Fiscal Year 2001,* U.S. Immigration and Naturalization Service, July 2002.

Forty-three H–1B Technical Skills Training Grants totaling $95.6 million were awarded under the provisions of ACWIA 1998. Under ACWIA 2000, the Department of Labor has awarded, as of October 1, 2002, a total of 45 grants totaling $116.7 million; of these, 31 grants totaling $82.3 million were under the 75 percent funding stream and 14 grants totaling $34.5 million were under the 25 percent funding stream. H–1B grants under earlier SGAs were funded for up to a 24-month period, with the possibility of an additional option year, based on performance, continued demand for training, and availability of funds.

Combining awards made under both ACWIA 1998 and ACWIA 2000, the Department of Labor has awarded a total of 88 H–1B Technical Skills Training Grants totaling $212 million. Because funds are available as they are collected from H–1B user fee revenues, the Department anticipates that additional H–1B Technical Skills Training Grant applications will be funded throughout fiscal year 2003 (October 1, 2002–September 30, 2003). Additional details on the background of the H–1B Technical Skills Training Grants demonstration project can be found at the H–1B Web site *http://www.doleta.gov/h–1b.* This Web site contains descriptions of current projects, legislative documents and research papers.

B. Principles of H–1B Technical Skills Training Grants

Development, implementation and operation of H–1B Technical Skills Training Grants as envisioned under the authorizing legislation (see Background above) is based on the following principles:

Business Involvement: Businesses are the workforce investment system's customers who generate the demand for all jobs, in particular, the demand for high skill occupations. Businesses are essential partners in formulating, developing and operating H–1B technical skills grant projects. Under WIA, business plays a critical, leadership role in planning and overseeing training and employment activities. WIA requires that the majority of the membership of state and local Workforce Investment Boards are business representatives, and that the state and local board chairs be drawn from business. For the purpose of these grants, it is desirable that businesses represented in the group applying for this grant include those with current high technology skills shortages. Some of these businesses may have in the past utilized foreign workers under the H–1B visa program. Now, they intend to hire, retain, or promote graduates of the H–1B technical skills training program.

Partnership Sustainability: The grant awards under this SGA will not exceed duration of 36 months with an option for a no cost extension of up to 12 additional months. No cost extensions extend the period during which existing grant funds may be spent. ETA intends that regional partnerships sustain themselves over the long term and well after the federal resources from this initiative have been exhausted. In addition, coordination and consultation with the applicable state workforce agency and/or the Governor's office or State Workforce Investment Board is vital to long-term sustainability and will potentially spread high skill training efforts beyond the grantee site. The statutory 50 percent non-federal matching requirement is an integral part of ensuring sustainability because the matching resources are expected to help extend the skill shortages training effort beyond the term of the grant. This partnership sustainability concept relates to two rating criteria: Links with Key Partners and Sustainability (the resources each partner offers and the role of external resources in building the foundation for a long-term partnership).

High Skill Level Focus and Innovative Service Delivery: Training selected employed and unemployed workers to fill current local or regional high skill level shortages is the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as high technology skill shortage areas. H–1B Technical Skills Training Grants are not intended to address lower level skill labor shortages nor are they intended to fund training programs aimed at imparting basic educational skills. In addition, H–1B grants are not intended to address occupational shortages due to reasons other than high technology skill shortages.

Innovative or proven tools and approaches, that may include on-the-job training, distance learning, or combinations of training and educational techniques, to close particular skill gaps and provide strategies for training that promote regional development are hallmarks of successful H–1B technical skills training projects. H–1B grantees should tailor training to the needs of the selected incumbent and unemployed workers, both in content and delivery.

Qualified Target Population: Technical skills training is geared towards employed and unemployed workers who can be trained and placed directly in highly skilled H–1B occupations or in the highest echelons of an H–1B career ladder. Candidates for training funded by H–1B Technical Skills Training Grants should possess (and be identified through appropriate assessment tools) a high level of general educational background and, in addition, have the prerequisites for the occupational training being proposed. Targeted individuals should also possess certain characteristics such as drive and initiative that will help guarantee successful completion of the high skill level training funded by H–1B grants.

Employees at the H–1B skill level are generally characterized as having a Bachelor's degree or comparable work experience. The H–1B technical skill training is not limited to skill levels commensurate with a four-year degree. It may be used to prepare workers for a broad range of positions along a specified career ladder. ''Career ladder'' may generally be defined as a system of career options which encourage opportunities for professional growth and upward mobility. Technical skills training can include a broad range of positions along a career ladder that directly leads to a high skills level job within a reasonable period of time. Thus, potential trainees are not required to enter training with a four-year degree. Additionally, trainees do not necessarily have to acquire a four-year degree to be successful, although many will have a four-year degree and many others will possess two-year degrees. Career ladders create opportunities for individuals who may vary in experience and education levels (such as specialty training and Associates' degrees) to advance along a defined career ladder and qualify through additional training and education for H–1B level related occupations.

Use of Skill Standards: Skill standards represent a benchmark by which an individual's achieved competence can be measured. Work in this area has been performed by private industry and trade associations, registered apprenticeship training systems, and public and private partnerships. Well-defined skill standards can be useful tools in matching training goals to targeted occupational areas. Applicants are encouraged to survey the progress to date in developing occupational skill standards in their community and in applicable industries.

As noted earlier (In Part IA—Background), the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214 (i), 8 U.S.C. 1184 (i) of the Immigration and Naturalization Act (INA), speaks to a very high skill level for these ''specialty occupations.'' These are occupations that require ''theoretical and practical application of a body of highly specialized knowledge,'' and full state licensure, if required for the occupation, to practice in the occupation. The standard for these occupations is either completion of at least a Bachelor's degree or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty. Specialized and professionally recognized certificates may also be characteristic of a high level of technical skills.

Comprehensive Local and Regional Planning: H–1B technical skills training applicants must describe the local area or region that will be served with particular emphasis on high technology skills shortages. Applicants are encouraged to ascertain current labor force and industry data to reflect the skills shortages in their region. The proposal also must identify the political jurisdictions to be included and provide an enumeration of the specific local workforce investment areas that are served under WIA. Current data on approved H–1B visa petitions should be utilized to the extent feasible to describe skill shortages in specific occupations. Appendix B to this solicitation is a listing of occupations for which H–1B visa petitions have been recently approved. Requests for H–1B visas for the applicant's region may reflect a skills shortage for those occupations, as well. Applicants may consider surveying local and regional employers to ascertain the extent of employer use of H–1B visas to obtain foreign workers and to obtain information on the specific occupations and skills imported.

Applicants are encouraged to utilize all available state and local data, including that provided by area businesses and business associations, in making determinations of regional shortages. Applicants are encouraged to analyze data made available by their state labor market information (LMI) director, the Bureau of Labor Statistics (BLS), and through the local One-Stop delivery system.

C. DOL Policies and Emphases

Section 111(c)(4)(A) of ACWIA 2000 states that consideration will be given to applicants who, where applicable, commit to provide three target outcomes for participants who complete training. These outcomes are the hiring of unemployed trainees, increased wages or salaries of employed workers, and skill certificates documenting skills acquisition or a link to industry accepted occupational skill standards, certificates, or licensing requirements.

The Employment and Training Administration anticipates that applicants may need to make a range of supportive services available to enhance the quality and effectiveness of the skill training provided under the grant. Grant funds may not be used to provide supportive services. Appropriately focused services, as defined by section 101(46) of WIA—such as transportation or childcare—are considered as important enhancements to the technical skills training package.

Utilizing federal resources through co-enrollment in H–1B technical skills training and WIA is a strongly recommended course of action. While WIA resources cannot be counted toward the matching requirement; co-enrollment allows for much broader and comprehensive service provision. Successful applicants are encouraged to leverage such Federal resources to help make the technical skills training more effective.

In order to provide these resources, applicants should build linkages to the One-Stop Career Center network to reach out, inform, and recruit individuals to participate in H–1B technical skills training. The central role of the Local Boards in the planning and policy activity surrounding these grants is critical. WIA requires the Local Board to prepare a strategic workforce investment plan for the area that it oversees. The Local Board also designates One-Stop center operators and certifies or approves eligible training providers.

As required by ACWIA, ETA will give consideration in awarding grants to any proposal which includes and directly benefits two or more small businesses (100 employees or less).

DOL emphases for this SGA relate to level of training and occupations selected for training. In accordance with the legislative provisions to train American workers to an H–1B visa level, DOL seeks to achieve a higher level of skill training than has occurred to date in some H–1B grants—to a level that clearly prepares individuals to meet the H–1B visa definition of ''theoretical and practical application of a body of specialized knowledge* * *'' In addition, since a major objective of H–1B technical skills training grants is to alleviate dependency upon foreign workers in specialty occupations, DOL believes that increased priority is needed in occupations relating to the higher levels of computer science and information technology; architecture, engineering and surveying; biotechnology, biomedical research and manufacturing, and advanced manufacturing technology. Lower level healthcare and other non-H–1B occupations and preparatory or introductory level information technology areas will receive low selection priority under this SGA. DOL anticipates that the focus on a high level of training and on H–1B occupations will result in most participants being enrolled in training programs during the first year of the grant operation, with

actual training occurring during the remainder of the grant period.

Part II—Requirements

A. Eligible Participants

Training funded by a grantee may be both for persons who are currently employed and who wish to obtain and upgrade skills and for persons who are unemployed. The aim of the skills training is to place employed and unemployed workers in highly skilled H–1B related occupations. As noted above, eligible participants for H–1B Technical Skills Training Grants, prior to beginning training funded by H–1B training grants, should possess (and be identified as having through appropriate assessment tools) a high level of general educational background and, in addition, have the prerequisites for the occupational training being proposed. H–1B targeted individuals should also possess those characteristics such as drive and initiative that will help guarantee successful completion of the high skill level training funded by H–1B grants.

B. Administrative Requirements

1. General

Grantee organizations will be subject to: ACWIA 2000; these guidelines; the terms and conditions of the grant and any subsequent modifications; applicable Federal laws (including provisions in appropriations law); and any applicable requirements listed below—

a. Workforce Investment Boards—20 Code of Federal Regulations (CFR) Part 667.220, published in the **Federal Register** on Friday, August 11, 2000 (Administrative Costs).

b. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements). In addition, the audit requirements at 20 CFR 627.480 applies to commercial recipients.

f. All entities must comply with 29 CFR parts 93 and 98, and, where applicable, 29 CFR parts 96 and 99.

2. Administrative Costs

ACWIA 2000 Section 111 (c)(6) provides that an entity that receives a grant to carry out a program or project under section 414(c)(1)(A) of ACWIA may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs are defined at 20 CFR 667.220.

3. Start-up Costs

ACWIA 2000 Section 111 (c)(3) limits the amount of start-up costs of partnerships or new training projects, which may be charged to these grants. Except for partnerships of small businesses, the limit is five (5) percent of any single grant or costs not to exceed $75,000. For partnerships consisting primarily of small businesses, the limit is ten (10) percent of the cost allocable for a single grant or a maximum of $150,000.

C. Reporting Requirements

The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF269) is required until such time as all funds have been expended or the period of availability has expired. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System.

Progress Reports. The grantee must submit a quarterly progress report to the GOTR within 30 days following each quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter including:

1. Number completing training this quarter
2. Number completing training overall
3. Number enrolled in training
4. Number expected to complete training by end of project
5. Number new job placements as a result of training
6. Number promotions resulting from the training
7. Number wage increases resulting from training and amount of wage increases resulting from training
8. Number certifications and/or /degrees, by type, awarded as result of training

Note: DOL may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL reporting requirements.

A narrative section is also required for each quarterly report, including:

1. General overview of project progress, new developments and resolution of previous issues and problems.
2. Explanation of any problems and issues encountered and planned response.
3. Lessons learned in the areas of project administration and management, training delivery, partnership relationships and other related areas.
4. Discussion of the occupational areas for which skills training is being provided, including a listing of the occupations being trained, training delivery, number of students per occupation and other relevant information that provides a reasonable picture of the occupational training being conducted.

Final Report. A draft final report which summarizes project activities and employment outcomes and related results of the demonstration must be submitted no later than 60 days prior to the expiration date of the grant. After responding to DOL questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by DOL for preparing the final report.

D. Evaluation

As required by ACWIA 2000, applications must include an agreement that the program or project shall be subject to evaluation by the Secretary of Labor to measure its effectiveness. To measure the impact of these skill training grants, ETA will arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available and to provide access to program operating personnel and to participants, as specified by the evaluator(s) under the direction of ETA, including after the period of operation.

E. Matching Funds

Applicants must demonstrate the ability to provide resources equivalent to at least 50 percent of the grant award amount as a match. This statutory match may be provided in-cash or in-kind, and federal resources may not be counted against the matching requirement. At least one-half of the non-Federal matching funds shall be from the business or businesses or business-related nonprofit organizations involved. The amount and nature of the match must be clearly described in the application.

The 50 percent matching requirement is designed to assist grantees in initiating sustainability for the proposed project. The Department is particularly

interested that the applicants demonstrate clear evidence that matching resources will sustain training activities after the expiration of the grant. Although matches may be one-time occurrences, applicants are encouraged to seek partnerships that reflect a commitment, financially and non-financially, to the future success of the proposed program.

F. Grantee Data System

The grantee must have a system capable of collecting, storing and retrieving participant and training result information and producing reports needed for administrative, management, and analytical purposes. ETA will be routinely validating data as part of its oversight responsibilities, so grantees must ensure the accuracy and validity of information reported. The grantee must identify the data elements to be routinely collected.

G. Other

The application must include identification of a management entity, the proposed staffing pattern, the resumes of key staff members and detailed descriptions of the roles of various entities participating in the partnership. Each application MUST designate an individual who will serve as project director and who will devote a substantial portion of his/her time to the project, which may be defined as at least 60 percent. The applicant should also include a description of the organizational capacity and track record in high skill training and related activities of the primary actors in the partnership.

Part III—Application Process

A. Eligible Applicants

Section 111(c)(2)(A)(i) of ACWIA 2000 specifies that the Secretary shall, in consultation with the Secretary of Commerce, subject to the availability of funds in the H–1B Nonimmigrant Petitioner Account, award 75 percent of the grants to Local Boards established under section 116(b) or 117 of the WIA, 29 U.S.C. 2831(b) and 2832, or consortia of such Boards in a region. A consortium can cross state lines or involve more than one statewide Local Board.

Each Local Board or consortium of boards receiving grant funds must represent a local or regional public-private partnership consisting of at least one Local Board; one business or business-related non-profit organization such as a trade association and one community-based organization (which may be a faith-based organization), or higher education institution, or labor union.

The activities of the local or regional public-private partnership must be conducted in coordination with the activities of the relevant Local Board or Boards established under WIA. ACWIA 2000 requires that each partnership designate a fiscal agent responsible for being the recipient of grant funds.

Under this announcement, only Local Boards (through their designated fiscal agents) and consortia of Local Boards may apply for and receive these grant awards. This requirement does not prevent the participation of other partners or concerned entities, which are integral to the process of planning for and conducting skills training in skills shortage areas. As noted earlier under Supplementary Information, successful applicants under earlier H–1B solicitations are eligible to apply for grants under this competition. Current awardees must indicate how their new proposals can provide a different approach or scope to skills training given program improvements developed under the current award.

Applicants are encouraged to collaborate with entities that possess a sound grasp of the job market in the region and are in a position to address the issue of skill shortage occupations. These entities include organizations such as private, for-profit businesses—including small and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. These partners should include businesses and business associations, which have experienced first hand the problems of coping with skill shortages and which employ workers engaged in skill shortage occupations.

This notice will not prescriptively define the roles of individual entities within the partnership beyond requiring that the Local Boards or consortia be the applicant and designate a fiscal agent for receiving grant funds, as stated in ACWIA 2000. The applicant's proposal is expected to provide a detailed discussion of participating organizations' respective responsibilities.

Based on ETA's experience, regional partnerships that actively engage a wide range of participation from community groups—particularly with strong private employer involvement—appear to be more successful. Consortia of Local Boards representing more than one area that share common economic goals may join together as one applicant rather than applying individually.

The application must clearly identify the applicant (or the fiscal agent), the grant recipient (and/or fiscal agent), and describe its capacity to administer this project. It must also indicate that the project is consistent with and will be coordinated with the activities of the relevant Local Board or Boards and with the other partners in the workforce investment system(s) that are involved in technical skills activities in the relevant region(s).

According to Section 18 of the Lobbying Disclosure Act of 1995, an organization described in Section 501 (c) (4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require and an entity's procurement procedures must require that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, it does not authorize the applicant to avoid competition when procuring these services.

Part IV of this announcement identifies the criteria that will be used to rate applicant submissions. These criteria and point value are:

Criterion	Points
A. Statement of Need	10
B. Level of Training and Service Delivery Strategy	25
C. Target Population	10
D. Sustainability	15
E. Linkages with Key Partners	15
F. Outcomes, Management and Cost Effectiveness	25
Total Possible Points	100

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) separate and distinct parts, Parts I and II.

Part I of the proposal must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix C) and the Budget Information Form (Appendix D). Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall represent the responsible financial and administrative entity.

In preparing the Budget Information form, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA 2000 is specific in stating that grant resources are to be expended for programs or projects to provide technical skills training. An illustrative, but not exclusive, list of allowable and allocable types of administrative costs is provided in the WIA regulations at 20 CFR 667.200. In general, however, this grant does not contemplate or permit the purchase of capital equipment. The budget narrative should discuss precisely how the administrative costs support the project goals.

Part II must contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work. A grant application is limited to twenty-five (25) double-spaced, single-sided, 8.5 inch x 11 inch pages with one-inch margins. The applicant may provide resumes, a staffing pattern, statistical information and related material in attachments, which may not exceed fifteen (15) pages. Although not required, letters of commitment from partners or from those providing matching resources may be submitted as attachments. Such letters will not count against the allowable maximum page total. The applicant must briefly itemize those participating entities in the text of the proposal. Text type shall be 12 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities *and* an Executive Summary that is not to exceed two pages. The Time Line and the Executive Summary do not count against the 25-page limit. No cost data or reference to prices should be included in the technical proposal.

C. Hand Delivered Proposals

Hand delivered proposals will be received at the address identified above. Telegraphed and/or faxed proposals will not be accepted. Failure to adhere to the administrative instructions pertaining to Submission of Proposals (contained in Section B) and Delivery of Proposals (contained in Section C) will be considered as non-responsive.

D. Period of Performance

The initial period of performance will be up to 36 months from the date of execution of the grant documents. It is anticipated that individual awards will not exceed $3,000,000. ETA may elect to exercise its option for a no-cost extension for these grants for an additional period not to exceed 12 months, based on the success of the program and other relevant factors.

Part IV—Review Process & Rating Criteria

A. The Review Process

Applications for the H–1B technical skills training grants will be accepted continuously after the publication of this announcement until further notice. Technical review panels will meet periodically on an as-needed basis, given the number of applications and the availability of funds.

The technical review panel will make careful evaluation of applications against the criteria below. Final funding decisions will be based on the rating of applications as a result of the review process, and other factors such as statutory requirements (urban/rural balance, geographic balance, the requirement that at least 80 percent of funds be awarded for high technology, information technology, and biotechnology occupational training and that not more than 20 percent of funds be available for training in any single specialty occupation), availability of funds, and what is most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant(s) with or without discussions with the offeror(s). In situations without discussions, an award will be based on the offeror(s) signature on the SF 424, which constitutes a binding offer.

The rated applications will be placed in the following categories:

(1) If the application receives a rating of 80 and above, it will be placed on an eligible to be funded list. The applicant will remain on this list for 9 months before resubmittal is required. Applicants in this category may require further discussions. Inclusion on this list is not a guarantee of funding.

(2) If the application receives a rating of 79 or below, the applicant will be eligible to receive technical assistance through group workshops in areas such as:

- Grant Writing
- Partnership Building/Linkages
- Administrative Requirements
- Service Delivery Strategies

(3) Those applications receiving a rating of 70–79 will also be eligible to receive additional individualized technical assistance.

All applicants will receive written notice of their rating which will include a summary of their strengths and weaknesses in the application at the conclusion of the review process.

B. Rating Criteria

Applications will be rated on how completely they respond to the criteria set forth below, and how responsive they are to the policy goals and emphases set forth in Part II of this document.

1. Statement of Need (10 points)

ACWIA 2000 is a response to high technology skill shortages around the country in specific occupations. The most recent H–1B occupation data are provided as an attachment to this solicitation. Applicants should clearly describe the local area or region for which services are to be provided and the high technology skill shortages prevalent in the geographic area and region.

Applicants are encouraged to utilize all available data resources to ensure that their descriptions of need are relevant to local and regional labor market shortages. Information can include, but is not limited to: statistical information from Federal government sources, state labor market information, H–1B applications, newspaper want ads, expressed employer hiring demands, and information from the One-Stop system, in responding to this criterion. Descriptive items about the local area or region, such as rural or urban, should be included. (What high technology needs and opportunities exist in the region? What are the particular characteristics of the local political, economic and administrative jurisdictions—Local Boards, labor market areas, or special district authorities—that led them to associate for the purpose of this application?)

A general description of the local area or region should include socioeconomic data, with a particular focus on the general education and skill levels prevalent in the area. Applicants are encouraged to include information such as transportation patterns, and statistical and demographic information (*e.g.*, age and income data). Other germane questions that will provide greater depth of description include: What is the general business environment? What industries and occupations are growing and declining? What types of skills are being sought in the geographic area or region by the major employers in general, and the partnership member companies, in particular? Data from local and regional employers relating to the use of H–1B visas to import foreign workers to meet their high technology skill needs will be of special help in demonstrating high technology training needs.

2. Level of Training and Service Delivery Strategy (25 points)

Applicants must lay out the comprehensive strategy proposed for providing the technical skills training that is mandated as the core activity of these grant awards. Applicants shall describe a service delivery strategy that provides training at or leading to an H–1B level skill. Part 1C of this SGA spells out very clearly DOL's strong interest in achieving a higher level of training than has occurred in some H–1B grants, to a level that clearly prepares individuals to meet the H–1B visa definition of ''theoretical and practical application of a body of specialized knowledge.'' A discussion of the impact of skills training in response to the identified skill shortages of the region should be included. Since the H–1B skill level is at the Bachelor degree level or above, training may include formal education. Specific issues that must be addressed as part of this section include:

- The range and identity of potential training providers, including identifying whether they are on the eligible training provider list as described in WIA, section 122, the types of skills training that will be offered, how the training will meet the local area or regional skills needs, and how the training will be provided.
- The targeted occupations and skill level and how the skill upgrading will be measured. If degrees and/or certificates are contemplated, the type and recognition authority should be described as well as an estimate of the number and type to be attained.
- What steps will be taken to reach out to the community(ies) to provide information about the project and planned training activities.
- How will the types of training planned for project participants be determined.

Training at a sufficiently high skill level will be an important factor in this criterion. If career ladder training is proposed, the applicant must provide adequate detail demonstrating that all rungs of the ladder lead to H–1B training at the top rung and that it is reasonably likely that the majority of individuals on the ladder will complete the highest rungs of H–1B level training under the H–1B Technical Skills Training Grant.

Innovation in the context of service delivery is also considered essential and is a basic principle of H–1B Technical Skills Training Grants and can represent a wide variety of approaches and techniques. Innovation may be implemented in the manner in which training services are provided, *e.g.*, distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate). Creativity in developing the service strategy is also encouraged. The service delivery strategy must meet the needs of business partners, providing skills identified in the statement of need. Evidence should be provided that business partners have been involved in developing the training service delivery plan. The service delivery strategy should also effectively reach out to and meet needs of the target population, *i.e.*, desired candidates are recruited and training conducted in such a manner that participants can attend without undo hardship (training during workday, on weekends and/or through distance learning methods). Applicants should fully describe any innovative and creative approaches contemplated.

3. Target Population (10 points)

The eligibility criteria for skills training enumerated in ACWIA 2000 are extremely broad and include employed and unemployed workers. This section should clearly identify the targeted workers, including their characteristics and explain why they are targeted. A discussion of what assessment procedures are to be used to ensure that the targeted individuals are qualified for the training and have a high likelihood of successful completion of the training is critical. The applicant should address some specific issues relating to the target worker population such as:

- How many employed workers and unemployed workers will be targeted for services and why?
- What are the technical skills training needs of those workers to fulfill skill shortage occupations at the H–1B level? Note that employers' needs should be addressed in Statement of Need.
- It is extremely important that the selection process for workers, both employed and unemployed, be carefully described to make it clear how those individuals will be determined to possess the capacity after the completion of training to accept jobs that previously were filled via the H–1B visa process, or could be filled at the H–1B level. In the case of both incumbent workers and unemployed workers, there needs to be an extensive discussion of the criteria to be used to assess and enroll individuals. Applicants shall describe how members of the target population will be selected and the technical skills training needs of the target population in such a way as to verify that H–1B level training is actually required, especially in the case of incumbent workers. Applicants shall describe the assessment tools used to ensure that proposed trainees are able to complete H–1B level training, in terms of ability and educational preparation. Note that trainees must possess a fairly advanced skills set prior to the start of H–1B training, *i.e.*, they should be capable of pursuing training at the college level.
- What is the business partners' involvement in the selection of candidates?
- What is the targeted education and skill level of trainees as they enter the program?

4. Sustainability (15 points)

Sustainability refers to the continuation of the partnership based on the strength of that partnership and the ability of the training program to deliver value to employers. Applicants must demonstrate that they will meet the statutory requirement to provide a 50 percent match to the resources for proposed projects. Matches may either be in-cash or in-kind and federal resources cannot be counted towards the matching requirement. Applicants must describe to what extent the partners provide matching funds or services and how this contribution assists in building the foundation for a long-term partnership, *i.e.*, sustainability. Matching resources and partnerships are considered an integral element of the project, as they support and strengthen the quality of the technical skills training provided and contribute materially toward sustainability. This section MUST contain a detailed discussion of the size, nature, and quality of the non-federal match and how the match will be used to further the goals of the project. Proposals not presenting a detailed discussion of the non-federal match or not meeting the statutory 50 percent match requirement will be considered non-responsive and will not be considered.

Technical Skills Training Grant resources are limited to raising the skill levels of individuals to fill high skills H–1B occupations. Applicants will be given preference for identifying other resources both federal and non-Federal, because they can contribute materially toward quality outcomes and sustainability. (Note that although federal resources may not be counted as match, they may be counted to demonstrate the project sustainability.) Applicants are also encouraged to establish relationships with State Workforce Investment Boards and

relevant state agencies, as they may provide valuable assistance and resources that can contribute to the success of a proposed project. Applicants should enumerate these resources in this section to support their discussion of sustainability and also describe any specific existing contractual commitments. The sustainability issue can be addressed by providing concrete evidence that training activities of the partnership will be continued after the expiration date of the grant by using other public or private resources.

5. Linkages With Key Partners (15 points)

The application must show the partnership required by Section 111(c)(2)(A)(i) of ACWIA 2000 (a Local Board or consortium of Local Boards; one community-based organization, higher education institution, or labor union; and one business or business-related nonprofit organization such as a trade association). ETA encourages, and will be looking for, applications that go beyond the minimum requirements of the statute and show broader, expected long-term partnerships. The applicant should identify the partners and how they will interact together, *i.e.*, what role each will play and what resources each partner will offer. In particular, this section should identify partnerships with the private and public sectors, including ties with small- and medium-sized businesses and small business federations. In addition, the proposal should include a description of any coordination and consultation activities with the applicable state workforce agency and/or Governor's office or state Workforce Investment Board. Evidence of such coordination and/or consultation such as written documentation should be included in the application. The Service Delivery Strategy section of the Statement of Work describes the role of each of the actors in delivering the proposed services, while this section is intended to look at the linkages from a more structural perspective with particular emphasis on the employers in the consortium that are experiencing skills shortages and have hiring or upgrading needs.

ETA also is interested in the extent of the involvement of small businesses in the partnership. Consideration will be given to any partnership that involves and directly benefits more than one small business (each consisting of 100 employees or less).

6. Outcomes, Management and Cost Effectiveness (25 points)

This criterion includes three areas: (a) Program and training outcomes, (b) project and grant management, and (c) cost effectiveness. Applicants must describe the predicted outcomes resulting from this training. It is estimated that the projected results will be somewhat varied given the mix of people who will be served. Success can be determined through placements in H–1B skills shortage occupations, increased wages, or skills attainment in H–1B occupations, or in training for or placement in positions on a defined career ladder directly leading toward such skills attainment.

For unemployed workers, outcomes will be viewed in terms of gaining new employment and enhanced skills attainment in, or on the ladder to H–1B skill shortage occupations.

Outcomes for employed workers may be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset. Because of the differing skill levels and backgrounds of participants in an H–1B training program, the outcomes section should discuss gains attained for individual participants in context of their backgrounds and skill levels when they entered. Therefore, the focus of the discussion in this section should emphasize very specifically the benefits that occur because of the training. For example, an applicant might state that a certain skill level is projected for a given group and indicate what change in skills that represents and how that might translate into an increase in earnings.

As noted in Level of Training and Service Delivery Strategy above, the application must identify what occupations will be trained for under this grant. Please identify each occupation in terms of skills in high technology, information technology and biotechnology, including skills needed for software and communication services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, bio-technology and biomedical research and manufacturing and innovation services.

Applicants should indicate how they plan to achieve one or more of the following outcome goals upon successful completion of a training program:

(1) The hiring of unemployed trainees (if applicable);

(2) Increases in the wages or salaries of already employed trainees (if applicable); and

(3) Awards of educational degrees, credit toward degrees, skill certifications to trainees or links the trainees to industry-accepted occupational skill standards, certificates or licensing requirements.

Management includes qualifications and experience of proposed staff and related areas. Applicants should include a description of the organizational structure and processes and automated system to be used for managing the project, collecting project data, monitoring and tracking progress, responding to issues and problems, and producing relevant reports for both the grantee and DOL.

Applicants will provide a detailed discussion of the expected cost effectiveness of their proposal in terms of the expected cost per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes, placement, increased salary, promotion or retention and the levels of skills to be achieved (such as attaining state licensing in an occupation) relative to the amount of training that the individual needed to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained, including degrees and certificates attained, and quantitatively in terms of wage gains. Costs must be justified in relation to cost per participant and, when possible, contrast with similar costs for training conducted elsewhere. Cost effectiveness may be demonstrated in part by cost per participant and cost per activity in relation to the level and duration of services provided and outcomes to be attained; the applicant's expectations regarding these measures should be included.

Signed in Washington, DC, this 31st day of December 2002.

Laura Cesario,

Grant Officer.

Appendix A: Legislative Mandate
Appendix B—H–1B Petitions Approved in Fiscal Year 2001 for Top 10 Major Occupational Groups and Top 23 Detailed Occupations, Source: INS, July 2002
Appendix C: (SF) 424—Application Form
Appendix D: Budget Information Form
Appendix E: Project Profile Information (completed by applicant)

Appendix A—Legislative Mandate

(1) ACWIA and ACWIA 2000

The relevant portions of ACWIA 2000 dealing with the establishment of a fund for implementing a program of H–1B skills training grants are as follows:

''Section 286(s)—H–1B Nonimmigrant Petitioner Account (As Amended)

(1) In General—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–1B Nonimmigrant Petitioner Account.' Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under 8 U.S.C. 1184 (c)(9)(section 214(c)(9)).

(2) Use of Fees for Job Training—55 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998.''

''SEC. 111. Demonstration Programs and Projects To Provide Technical Skills Training for Workers.

Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (as contained in title IV of division C of Public Law 105–277; 112 Stat. 2681–653) is amended to read as follows:

(c) Demonstration Programs and Projects To Provide Technical Skills Training for Workers.—

(1) In General.—

(A) Funding.—The Secretary of Labor shall use funds available under section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)) to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(B) Training Provided.—Training funded by a program or project described in subparagraph (A) shall be for persons who are currently employed and who wish to obtain and upgrade skills as well as for persons who are unemployed. Such training is not limited to skills levels commensurate with a four-year undergraduate degree, but should include the preparation of workers for a broad range of positions along a career ladder. Consideration shall be given to the use of grant funds to demonstrate a significant ability to expand a training program or project through such means as training more workers or offering more courses, and training programs or projects resulting from collaborations, especially with more than one small business or with a labor-management training program or project. The need for the training shall be justified through reliable regional, state, or local data.

(2) Grants.—

(A) Eligibility.— To carry out the programs and projects described in paragraph (1)(A), the Secretary of Labor shall, in consultation with the Secretary of Commerce, subject to the availability of funds in the H–1B Nonimmigrant Petitioner Account, award—

(i) 75 percent of the grants to a local workforce investment board established under section 116(b) or section 117 of the Workforce Investment Act of 1998 (29 U.S.C. 2832) or consortia of such boards in a region. Each workforce investment board or consortia of boards receiving grant funds shall represent a local or regional public-private partnership consisting of at least—

(I) one workforce investment board;

(II) one community-based organization or higher education institution or labor union; and

(III) one business or business-related non-profit organization such as a trade association: Provided, That the activities of such local or regional public-private partnership described in this subsection shall be conducted in coordination with the activities of the relevant local workforce investment board or boards established under the Workforce Investment Act of 1998 (29 U.S.C. 2832); and

(ii) 25 percent of the grants under the Secretary of Labor's authority to award grants for demonstration projects or programs under section 171 of the Workforce Investment Act (29 U.S.C. 2916) to partnerships that shall consist of at least 2 businesses or a business-related nonprofit organization that represents more than one business, and that may include any educational, labor, community organization, or workforce investment board, except that such grant funds may be used only to carry out a strategy that would otherwise not be eligible for funds provided under clause (i), due to barriers in meeting those partnership eligibility criteria, on a national, multi state, regional, or rural area (such as rural telework programs) basis.

(B) Designation of Responsible Fiscal Agents.— Each partnership formed under subparagraph (A) shall designate a responsible fiscal agent to receive and disburse grant funds under this subsection.

(C) Partnership Considerations.—Consideration in the awarding of grants shall be given to any partnership that involves and directly benefits more than one small business (each consisting of 100 employees or less).

(D) Allocation of Grants.—In making grants under this paragraph, the Secretary shall make every effort to fairly distribute grants across rural and urban areas, and across the different geographic regions of the United States. The total amount of grants awarded to carry out programs and projects described in paragraph (1)(A) shall be allocated as follows:

(i) At least 80 percent of the grants shall be awarded to programs and projects that train employed and unemployed workers in skills in high technology, information technology, and biotechnology, including skills needed for software and communications services, telecommunications, systems installation and integration, computers and communications hardware, advanced manufacturing, health care technology, biotechnology and biomedical research and manufacturing, and innovation services.

(ii) No more than 20 percent of the grants shall be available to programs and projects that train employed and unemployed workers for skills related to any single specialty occupation, as defined in section 214(i) of the Immigration and Nationality Act.

(3) Start-Up Funds.—

(A) In General.—Except as provided in subparagraph (B), not more than 5 percent of any single grant, or not to exceed $75,000, whichever is less, may be used toward the start-up costs of partnerships or new training programs and projects.

(B) Exception.—In the case of partnerships consisting primarily of small businesses, not more than 10 percent of any single grant, or $150,000, whichever is less, may be used toward the start-up costs of partnerships or new training programs and projects.

(C) Duration of Start-Up Period.—For purposes of this subsection, a start-up period consists of a period of not more than 2 months after the grant period begins, at which time training shall immediately begin and no further Federal funds may be used for start-up purposes.

(4) Training Outcomes.—

(A) Consideration for Certain Programs and Projects.—Consideration in the awarding of grants shall be given to applicants that provide a specific, measurable commitment upon successful completion of a training course, to—

(i) hire or effectuate the hiring of unemployed trainees (where applicable);

(ii) increase the wages or salary of incumbent workers (where applicable); and

(iii) provide skill certifications to trainees or link the training to industry-accepted occupational skill standards, certificates, or licensing requirements.

(B) Requirements for Grant Applications.—Applications for grants shall—(i) articulate the level of skills that workers will be trained for and the manner by which attainment of those skills will be measured; (ii) include an agreement that the program or project shall be subject to evaluation by the Secretary of Labor to measure its effectiveness; and (iii) in the case of an application for a grant under subsection (c)(2)(A)(ii), explain what barriers prevent the strategy from being implemented through a grant made under subsection (c)(2)(A)(i).

(5) Matching Funds.—Each application for a grant to carry out a program or project described in paragraph (1)(A) shall state the manner by which the partnership will provide non-Federal matching resources (cash, or in-kind contributions, or both) equal to at least 50 percent of the total grant amount awarded under paragraph (2)(A)(i), and at least 100 percent of the total grant amount awarded under paragraph (2)(A)(ii). At least one-half of the non-Federal matching funds shall be from the business or businesses or business-related nonprofit organizations involved. Consideration in the award of grants shall be given to applicants that provide a specific commitment or commitments of resources from other public or private sources, or both, so as to demonstrate the long-term sustainability of the training program or project after the grant expires.

(6) Administrative Costs.—An entity that receives a grant to carry out a program or project described in paragraph (1)(A) may not use more than 10 percent of the amount of the grant to pay for administrative costs associated with the program or project.

(2)INA

The Immigration and Nationality Act (INA)(section 101(a)(15) (H)(i)(b))(8 U.S.C 1101 (a)(15)(H)(i)(B)) defines the H–1B alien as one ''who is coming temporarily to the United States to perform services in a specialty occupation * * * or as a fashion model * * * ''

The INA (Section 214(i)) sets criteria to define the term ''specialty occupation:''

(1) For purposes of section 1101(a)(15)(H)(i)(b) and paragraph 2, a ''specialty occupation'' means an occupation that requires—(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 1101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or (C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

APPENDIX B.—H–1B PETITIONS APPROVED IN FISCAL YEAR 2001 FOR TOP 10 MAJOR OCCUPATIONAL GROUPS AND TOP 23 DETAILED OCCUPATIONS, SOURCE: INS, JULY 2002

Occupations	Group rank	Detailed rank	LCA* code	Total	Percent
Computer-related	1	.....	03	191,397	58.0
Systems analysis and programming	.....	1	030	171,784	52.1
Occupations not elsewhere classified (n.e.c.)	.....	3	039	13,661	4.1
Data communications and networks	.....	17	031	2,618	0.8
Computer systems technical support	.....	18	033	2,590	0.8
Architecture, engineering and surveying	2	.....	00/01	40,388	-2.2
Electrical/Electronics engineering	2	.....	003	15,356	4.7
Occupations n.e.c.	.....	6	019	8,404	3.4
Mechanical engineering	.....	10	007	4,815	1.5
Architectural	.....	15	001	2,937	0.9
Civil engineering	.....	19	005	2,534	0.8
Industrial engineering	.....	23	012	2,184	0.7
Administrative specializations	3	.....	16	23,794	7.2
Accountants, auditors and related occupations	.....	5	160	11,076	3.4
Occupations n.e.c.	.....	13	169	3,279	1.0
Budget and management systems	.....	14	161	3,245	1.0
Sales and distribution management	.....	21	163	2,415	0.7
Education	4	.....	09	17,431	5.3
College and university education	.....	4	090	12,183	3.7
Preschool, primary school and kindergarten education	.....	20	092	2,534	0.7
Managers and officials	5	.....	18	12,423	3.8
Miscellaneous n.e.c.	.....	7	189	6,864	2.1
Medicine and health	6	.....	07	11,334	3.4
Physicians and surgeons	.....	12	070	4,541	1.4
Occupations n.e.c.	.....	16	079	2,827	0.9
Life Sciences	7	.....	04	6,492	2.0
Biological Sciences	.....	11	041	4,813	1.5
Social Sciences	8	.....	05	6,145	1.9
Economics	.....	8	050	5,733	1.7
Mathematics and physical sciences	9	.....	02	5,772	1.7
Chemistry	.....	22	022	2,360	0.7
Miscellaneous professional, technical & managerial	10	.....	19	5,662	1.7
Occupations n.e.c.	.....	9	199	5,106	1.5

*Labor Condition Application code

Appendix E—Project Profile Information

Applicant Name: _____
Project Title: _____
Occupations and Number of individuals to be Trained [list]:
Level of Training:
a. Pre-career ladder_____
b. Lower career ladder_____
c. Mid-career ladder_____
d. H–1B visa level (bachelor's degree or equivalent, professionally recognized certificate training)_____

Note: Pre-Career Ladder training refers to training that is meant to prepare someone for development along a career path. This may include basic literacy classes, GED classes, basic computer skills training, ESL education, or other low level training that in and of itself will not prepare the student to hold a job on an H–1B level career ladder. Lower career ladder and mid-career level training is more advanced than pre-career ladder but still constitutes foundation preparation rather than training specifically addressing a specialty occupation at the H–1B visa level. The H–1B visa level requires ''a theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specialty.''

Targeted Population:
a. Incumbent workers_____
b. Unemployed workers_____

Note: incumbent workers are those currently employed by a specific company or business. Unemployed workers are those workers not currently employed, but still part of the labor force.

Geographic area served:
a. Rural_____
b. Urban_____

Note: A general delineation of urban/rural is whether the geographic area served in within a Metropolitan Statistical Area (MSA). If within a MSA, the area is considered urban, otherwise, rural.

Degrees/certificates expected [list by type. name and number]:

[FR Doc. 03–193 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. NRTL1–88, NRTL1–89, NRTL2–90, NRTL3–90, NRTL2–92, NRTL3–92, NRTL1–93, NRTL2–93, NRTL3–93, NRTL4–93, NRTL1–97, NRTL1–98, NRTL1–99, NRTL1–2001, NRTL2–2001]

Modify Scope of Recognition of NRTLs

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice modifies the scope of recognition of certain Nationally Recognized Testing Laboratories (NRTLs).

EFFECTIVE DATE: January 6, 2003.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Administration (OSHA) hereby gives notice of changes to the scope of recognition of the Nationally Recognized Testing Laboratories (NRTLs) listed below. Specifically, some of the test standards that OSHA currently includes in the scope of recognition of these NRTLs are no longer ''appropriate test standards'' primarily because they have been withdrawn or replaced. As a result, we will delete them from the scope of recognition of each affected NRTL, as listed below in this notice. This modification in scope will be noted by making appropriate changes to the listing of test standards in our informational Web page for each NRTL, which detail OSHA's official scope of recognition for the NRTL. These Web pages can be accessed at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*. In this notice, we list the test standards to be removed for each NRTL below under the heading ''Withdrawn or Replaced Standards.'' We provide the following information for those who may be unfamiliar with OSHA requirements concerning NRTLs.

OSHA recognition of any NRTL signifies that the organization has met the legal requirements in section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

In testing and certifying (*i.e.*, approving) such products, NRTLs must demonstrate that the products conform to ''appropriate test standards.'' This term is defined under 29 CFR 1910.7(c) and essentially means consensus-based product safety test standards developed and maintained current by U.S.-based standards developing organizations (SDOs). Such test standards are not OSHA standards, which are general requirements that employers must meet, but, individually, specify technical safety requirements that a particular type of product must meet.

OSHA recognizes each NRTL for a particular scope of recognition, which includes a list of those product safety test standards that the NRTL may use in approving products. As a normal part of its operations, an SDO occasionally withdraws existing test standards or adopts replacement test standards. In such cases, OSHA can no longer consider the withdrawn or replaced standards as ''appropriate,'' and as a result, the Agency can no longer recognize NRTLs for the standard.

To substitute other test standards for those we are removing, under our policy, the NRTL may request or OSHA can provide recognition for comparable test standards, *i.e.*, other appropriate test standards covering comparable product testing. We list these test standards below for each NRTL under the headings ''Comparable Replacement Standards.'' In one case (UL 1598), OSHA already includes the comparable test standard in the NRTL's scope. However, in many cases, there is no replacement standard or the NRTL did not request one prior to publication of this notice. However, if we receive such a request after publication of this notice and determine the test standard is ''comparable,'' as described above, OSHA will add it to the NRTL's scope of recognition and therefore to OSHA's informational web page for the NRTL.

Applied Research Laboratories, Inc. (ARL)

[Docket No. NRTL1–97]

Withdrawn or Replaced Standards

UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)

Canadian Standards Association (CSA)

[Docket No. NRTL2–92]

Withdrawn or Replaced Standards

ANSI C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
ANSI Z21.10.2 Water Heaters—Sidearm Type Water Heaters
ANSI Z21.11.1 Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
ANSI Z83.3 Gas Utilization Equipment in Large Boilers
ANSI Z83.17 Direct Gas Fired Door Heaters
UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D–C Fuses for Industrial Use
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air
UL 1087 Molded-Case Switches
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3101–2–20 Electrical Equipment for Laboratory Use; Part 2: Laboratory Centrifuges
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 3121–1 Process Control Equipment
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements

UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Temperature Sensing Controls**
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Doors
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level-Operating Controls of the Float Type for Household and Similar Applications

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010C–1 Process Control Equipment

Curtis-Straus LLC (CSL)

[Docket No. NRTL–1–99]

Withdrawn or Replaced Standards

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements

Entela, Inc. (ENT)

[Docket No. NRTL2–93]

Withdrawn or Replaced Standards

UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

FM Global Technologies LLC (FMGT) [formerly Factory Mutual Research Corporation]

[Docket No. NRTL3–93]

Withdrawn or Replaced Standards

ANSI S12.12 Nonincendive Electrical Equipment for Use in Class I and II, Division 2, and Class III, Divisions 1 and 2, Hazardous (Classified) Locations
ANSI/NEMA 250 Enclosures for Electrical Equipment

Comparable Replacement Standards (If Applicable)

ANSI 12.12.01 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations

Intertek Testing Services NA, Inc. (ITSNA)

[Docket No. NRTL1–89]

Withdrawn or Replaced Standards

ANSI S12.12 Nonincendive Electrical Equipment for Use in Class I and II, Division 2, and Class III, Divisions 1 and 2, Hazardous (Classified) Locations
ANSI Z21.11.1 Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
UL 136 Pressure Cookers (not appropriate—no NRTL approval requirement)
UL 198B Class H Fuses
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D-C Fuses for Industrial Use
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 900 Air-Filter Units (not appropriate—no NRTL approval requirement)
UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Comparable Replacement Standards (If Applicable)

ANSI 12.12.01 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations
UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

MET Laboratories, Inc. (MET)

[Docket No. NRTL1–88]

Withdrawn or Replaced Standards

UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

National Technical Systems, Inc. (NTS)

[Docket No. NRTL1–98]

Withdrawn or Replaced Standards

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

SGS U.S. Testing Company, Inc. (SGSUS)

[Docket No. NRTL2–90]

Withdrawn or Replaced Standards

UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1571 Incandescent Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 1492 Audio-Video Products and Accessories
UL 1598 Luminaries (already included in NRTL's scope)
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

Southwest Research Institute (SWRI)

[Docket No. NRTL–3–90]

Withdrawn or Replaced Standards

UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air

Comparable Replacement Standards (If Applicable)

None

TUV America, Inc. (TUVAM)

[Docket No. NRTL–2–2001]

Withdrawn or Replaced Standards

UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

TUV Product Services GmbH (TUVPSG)

[Docket No. NRTL–1–2001]

Withdrawn or Replaced Standards

UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**

Comparable Replacement Standards (If Applicable)

UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

TUV Rheinland of North America, Inc. (TUV)

[Docket No. NRTL3–92]

Withdrawn or Replaced Standards

UL 136 Pressure Cookers (not appropriate—no NRTL approval requirement)
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 3121–1 Process Control Equipment
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Comparable Replacement Standards (If Applicable)

UL 1262 Laboratory Equipment (requested by NRTL)
UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements
UL 61010C–1 Process Control Equipment

Underwriters Laboratories Inc. (UL)

[Docket No. NRTL4–93]

Withdrawn or Replaced Standards

ANSI C37.71 Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
ANSI C57.12.13 Liquid-Filled Transformers Used in Unit Installations including Unit Substations-Conformance Requirements
ANSI C57.12.21 Pad Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
ANSI C57.12.27 Liquid Filled Distribution Transformers Used in Pad Mounted Installations, Including Unit Substations-Conformance Requirements
ANSI C62.1 Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
ANSI Z21.10.2 Water Heaters-Sidearm Type Water Heaters
ANSI Z21.11.1 Gas-Fired Room Heaters-Vented Room Heaters
ANSI Z21.14 Approval Requirements for Industrial Gas Boilers
ANSI Z21.16 Gas Unit Heaters
ANSI Z21.29 Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.37 Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Type Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.53 Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.55 Gas-Fired Sauna Heaters
ANSI Z21.70 Earthquake Actuated Automatic Gas Shutoff Systems
ANSI Z83.3 Gas Utilization Equipment in Large Boilers
ANSI Z83.10 Separated Combustion System Central Furnaces
ANSI Z83.17 Direct Gas Fired Door Heaters
UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D–C Fuses for Industrial Use
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 900 Air-Filter Units (not appropriate—no NRTL approval requirement)
UL 910 Test for Flame-Propagation and Smoke-Density Values for Electrical and Optical-Fiber Cables Used in Spaces Transporting Environmental Air
UL 1087 Molded-Case Switches
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3101–2–20 Electrical Equipment for Laboratory Use; Part 2: Laboratory Centrifuges Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements**
UL 3121–1 Process Control Equipment
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar

Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type**
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Temperature Sensing Controls**
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically-Operated Doors
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level-Operating Controls of the Float Type for Household and Similar Applications

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010C–1 Process Control Equipment

Wyle Laboratories, Inc. (WL)

[Docket No. NRTL1–93]

Withdrawn or Replaced Standards

UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L D–C Fuses for Industrial Use
UL 1087 Molded-Case Switches
UL 1244 Electrical and Electronic Measuring and Testing Equipment**
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures

Comparable Replacement Standards (If Applicable)

UL 1598 Luminaries (already included in NRTL's scope)
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements*

***Note on addition of UL 3111–1 to Wyle's scope:** This test standard is comparable to UL 1244, which is currently included in Wyle's scope of recognition. Wyle requested the addition of UL 3111–1 to its scope due to the pending withdrawal of UL 1244. However, as noted in the note below, UL 3111–1 is also due to be replaced. Therefore, the following note also applies to the addition of this standard.

****Note on test standard to be withdrawn:** This standard is due to be withdrawn by the standards development organization. However, as of the date of this notice, the OSHA NRTL Program staff has not determined whether or not there will be a replacement test standard. As a result, we will not remove this standard from the scope of the NRTL upon publication of this notice. Once we make the above determination, OSHA will replace or remove this standard, as appropriate. This note applies to the following test standards : UL 1244, UL 3111–1, UL 8730–2–4, and UL 8730–2–9.

In accordance with OSHA policy pertaining to recognition of replacement standards, the Agency only publishes one **Federal Register** notices to note the changes to the NRTL's scope of recognition. Changes to each NRTL's recognition are limited to those described in this notice. All other terms and conditions of each NRTL's recognition remain the same.

Signed at Washington, DC this 17th day of December, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–123 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

Intertek Testing Services, NA, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Intertek Testing Services, NA, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by January 21, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by January 21, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by January 21, 2003.

ADDRESSES: Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL1–89, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL1–89, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Webpage *http://www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202)693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Intertek Testing Services, NA, Inc. (ITSNA), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). ITSNA's expansion request covers the use of an additional testing site and additional test standards. OSHA's current scope of recognition for ITSNA may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/its.html*.

OSHA recognition of any NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

The most recent notices published by OSHA for ITSNA's recognition covered an expansion of recognition to include an additional site, which became effective on January 28, 2002 (67 FR 3912).

The current address of the ITSNA facilities already recognized by OSHA are:

ITSNA Antioch, 2200 Wymore Way, Antioch, California 94509
ITSNA Atlanta, 1950 Evergreen Blvd., Suite 100, Duluth, Georgia 30096
ITSNA Boxborough, 70 Codman Hill Road, Boxborough, Massachusetts 01719
ITSNA Cortland, 3933 U.S. Route 11, Cortland, New York 13045
ITSNA Los Angeles, 27611 LaPaz Road, Suite C, Laguna Niguel, California 92677
ITSNA Madison, 8431 Murphy Drive, Middleton, Wisconsin 53562
ITSNA Minneapolis, 7250 Hudson Blvd., Suite 100, Oakdale, Minnesota 55128
ITSNA San Francisco, 1365 Adams Court, Menlo Park, CA 94025
ITSNA Sweden AB, Box 1103, S–164 #22, Kista, Stockholm, Sweden
ITSNA Totowa, 40 Commerce Way, Unit B, Totowa, New Jersey 07512
ITSNA Vancouver, 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada
ITSNA Hong Kong, 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong
ITSNA Taiwan, 14/F., Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei 10451, Taiwan

The current address of the additional ITSNA testing site covered by the expansion application is:

ITSNA Lexington, 731 Enterprise Drive, Lexington, Kentucky 40510

General Background on the Applications

ITSNA has submitted an application, dated February 16, 2001 (see Exhibit 39), to expand its recognition to use 54 additional test standards and a site located in Lexington, Kentucky. The NRTL Program staff has determined that 13 of the 54 test standards cannot be included in the expansion because they either are not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c), or are already included in ITSNA's scope. The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA would approve 41 test standards for the expansion, which are listed below (see Expansion for Standards section).

Expansion for Additional Site

The application for the additional site contains information demonstrating that

there are adequate procedures, equipment, and personnel to perform product safety testing. Those procedures are in general use throughout ITSNA's testing operations. Also, the application information shows that Lexington is wholly-owned and operated by ITSNA.

The NRTL Program staff performed an on-site review (assessment) of the facility on October 15–17, 2001. In the on-site review report, dated December 10, 2001 (see Exhibit 40), the program staff recommended a ''positive finding,'' which means a positive recommendation on the recognition to the Assistant Secretary. However, the Agency delayed processing of the applications pending resolution of certain findings made by OSHA during its audits of other ITSNA sites already recognized. The NRTL Program staff obtained information in October 2002, which resolved these findings, and determined that OSHA may proceed with processing the application.

OSHA's recognition of the additional site would not be limited to any particular test standards. However, recognition of this site would be limited to performing product testing only to the test standards for which the site has the proper capability and programs, and for which OSHA has recognized ITSNA. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. The Agency would not recognize the site to issue certifications under ITSNA's NRTL operations. Currently, ITSNA issues such certifications only at specific sites listed above, and OSHA must review and accept the Lexington site before ITSNA issues certifications there. In addition, OSHA would permit the site to use all eight of the ''supplemental'' programs. ITSNA's scope of recognition already includes these programs.

OSHA has described the ''supplemental'' programs referred to above in a March 9, 1995, **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which (the ''supplemental programs'') any NRTL may use to control, audit, and accept the data relied upon for product certification. Such data is not normally generated at the NRTL's facility or by NRTL personnel. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. Any NRTL's initial recognition will always include the first or basic program, which provides that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA does not consider these programs in determining whether any NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Expansion for Additional Standards

ITSNA also seeks recognition for testing and certification of products for demonstration of conformance to the following 41 test standards, and OSHA has determined the standards are ''appropriate,'' within the meaning of 29 CFR 1910.7(c).

ANSI A17.5 Elevators and Escalator Electrical Equipment
ANSI C37.23* Metal Enclosed Bus and Calculating Losses in Isolated-Phase Bus
ANSI ICS 2 Industrial Control Devices, Controllers and Assemblies
ANSI S82.02.02 Electrical Equipment for Measurement, Control, and Laboratory Use
ANSI Z8.1 Commercial Laundry and Dry-cleaning Operations-Safety Requirements
ANSI Z21.1b Household Cooking Gas Appliances
ANSI Z21.19 Refrigerators Using Gas Fuel
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems
ANSI Z21.41 Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42 Gas-Fired Illuminating Appliances
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.61 Gas-Fired Toilets
ANSI Z21.66 Automatic Vent Damper Devices for Use With Gas-Fired Appliances Electrically Operated
ANSI Z21.69 Connectors for Movable Gas Appliances
ANSI Z21.73 Portable Type Gas Camp Lights
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
UL 14B Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors
UL 14C Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs
UL 142 Steel Aboveground Tanks for Flammable and Combustible Liquids
UL 147 Hand-Held Torches for Fuel Gases
UL 155 Tests of Fire Resistance of Vault and File Room Doors
UL 305 Panic Hardware
UL 331 Strainers for Flammable Fluids and Anhydrous Ammonia
UL 555 Fire Dampers
UL 636 Holdup Alarm Units and Systems
UL 746A Polymeric Materials—Short Term Property Evaluations
UL 746B Polymeric Materials—Long Term Property Evaluations
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
UL 896 Oil-Burning Stoves
UL 1010 Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
UL 1034 Burglary Resistant Electric Locking Mechanisms
UL 1088 Temporary Lighting Strings
UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures
UL 1242 Intermediate Metal Conduit
UL 1610 Central-Station Burglar-Alarm Units
UL 1637 Home Health Care Signaling Equipment
UL 2200 Stationary Engine Generator Assemblies
FMRC3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling
UL 603351 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements

• This standard is approved for equipment or materials intended for use in commercial and industrial power system applications. This standard is not approved for equipment or materials intended for use in installations that are excluded from the provisions of Subpart S in 29 CFR 1910 by 1910.302(a)(2).

OSHA's recognition of ITSNA, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization (*e.g.*, UL 1004) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1004). Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version

of the test standard or the latest ANSI version of that standard. (Contact ANSI or the ANSI web site (*http://www.ansi.org*) and click ''NSSN'' to find out whether or not a test standard is currently ANSI-approved.)

Existing Conditions

Currently, OSHA imposes the following conditions on its recognition of ITSNA.These conditions would apply also to the recognition of the Lexington site. As mentioned in previous notices, these conditions apply solely to ITSNA's NRTL operations and are in addition to any other condition that OSHA normally imposes in its recognition of an organization as any NRTL. These conditions are listed in this notice mainly for information.

(1) ITSNA may perform safety testing for hazardous location products only at the specific ITSNA sites that OSHA has recognized, and that have been pre-qualified for such testing by the ITSNA Chief Engineer. In addition, all safety test reports for hazardous location products must undergo a documented review and approval at the Cortland testing facility by a test engineer qualified in hazardous location safety testing, prior to ITSNA's initial or continued authorization of the certifications covered by these reports.

(2) ITSNA may not test and certify any products for a client that is a manufacturer or vendor that is either owned in excess of 2% by ITSLtd or affiliated organizationally with ITSNA.

Preliminary Finding

ITSNA has submitted an acceptable request for expansion of its recognition. As previously mentioned, in connection with the request, OSHA has performed an on-site review (evaluation) of the ITSNA Lexington, Kentucky, facility (site). ITSNA has addressed the discrepancies noted by the assessors following the review, and the assessors included the resolution in the on-site review report (see Exhibit 40).

Following a review of the application file, the on-site review report, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to ITSNA the expansion of recognition to include the Lexington, Kentucky, site and the test standards listed above, subject to the conditions as noted. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that Intertek Testing Services, NA, Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of recognition, subject to the above conditions. This preliminary finding, however, does not constitute an interim or temporary approval of the applications for ITSNA.

OSHA welcomes public comments, in sufficient detail, as to whether ITSNA has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of ITSNA's request, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–89 contains all materials in the record concerning ITSNA's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant ITSNA's expansion request. The Assistant Secretary will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 4th day of December, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–122 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Nos. NRTL4–93]

Underwriters Laboratories Inc., Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the applications by Underwriters Laboratories Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of these applications.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by January 21, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by January 21, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by January 21, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL4–93, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL4–93, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Webpage *http://www.osha.gov.* Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when

comments and submissions are received and when they are placed on the Webpage. Please contact the OSHA Docket Office at (202)693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653 at the address shown immediately above for the program, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Underwriters Laboratories Inc. (UL) has applied for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion requests cover the use of three additional sites. OSHA's current scope of recognition for UL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notices published by OSHA for UL's recognition covered a renewal and expansion of recognition, which became effective on May 8, 2002 (67 FR 30966).

The current address of the UL facilities (sites) already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 N.W. Lake Road, Camas, Washington 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District Taipei City, Taiwan

UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth RoadGuildford, Surrey GU3 1LR, United Kingdom

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan

The current addresses of the three additional UL sites covered by the expansion requests are:

UL Korea, Ltd., #805, Manhattan Building 36–2, Yeoui-dong, Yeoungdeungpo-gu, Seoul 150–010, Korea

UL International Germany GmbH, Frankfurter Strasse 229, D–63263 Neu-Isenburg, Germany

UL International (Netherlands) B.V., Landjuweel 52, NL–3905 PH Veenendaal, Netherlands

General Background on the Applications

UL has submitted an application, dated November 8, 2001 (see Exhibit 27), to expand its recognition to include a site in Seoul, Korea, and another application, dated March 15, 2002 (see Exhibit 27–1), to expand its recognition to include a site in Neu-Isenburg, Germany, and a site in Veenendaal, Netherlands. The applications contain information demonstrating that there are adequate procedures, equipment, and personnel to perform product safety testing and certification activities at the sites. Those procedures are in general use throughout UL operations. Also, the application information shows that all three sites are wholly-owned and operated by UL.

The NRTL Program staff performed an on-site review (assessment) of the Korea facility on March 11–14, 2002. In the on-site review report, dated May 23, 2002 (see Exhibit 28), the program staff recommended a ''positive finding,'' which means a positive recommendation on the recognition to the Assistant Secretary. However, the Agency delayed consideration of the application in order to combine it for processing purposes with the application that had by then been received for the two additional sites listed above. The NRTL Program staff performed an on-site review (assessment) of the Netherlands facility on June 11–14, 2002, and an on-site review (assessment) of the Germany facility on June 18–21, 2002. In each on-site review report, dated September 27 and 30, 2002 (see Exhibits 28 and 28–1), respectively, the program staff recommended a ''positive finding.''

OSHA's recognition of the additional sites would not be limited to any particular test standards. However, recognition of these sites would be limited to performing product testing only to the test standards for which each site has the proper capability and programs, and for which OSHA has recognized UL. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate multiple sites. In addition, OSHA would permit the sites to use all eight of the ''supplemental'' programs, although not all programs would necessarily be used in the near future. UL's scope of recognition already includes these programs.

OSHA has described the ''supplemental'' programs referred to above in a March 9, 1995, **Federal Register** notice (60 FR 12980, 3/9/95). This notice described nine (9) programs and procedures (collectively, programs), eight of which (the ''supplemental programs'') any NRTL may use to control, audit, and accept the data relied upon for product certification. Such data is not normally generated at the NRTL's facility or by NRTL personnel. The notice also includes the criteria for the use by the NRTL of these eight, or supplemental, programs. Any NRTL's initial recognition will always include the first or basic program, which provides that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA does not consider these programs in determining whether any NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Preliminary Finding

UL has submitted acceptable applications for expansion of its recognition as an NRTL. As noted above, in processing these requests, OSHA has performed on-site reviews of the proposed additional three UL facilities. UL has addressed any discrepancies noted by the assessor following the reviews, and the assessor has included the resolution in the on-site review reports.

Following a review of the application files, the on-site review reports, and other pertinent information, the NRTL Program staff has concluded that OSHA can grant to UL the expansion of its recognition to include the Seoul, Korea, the Neu-Isenburg, Germany, and the Veenendaal, Netherlands, sites listed above. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Underwriters Laboratories Inc. can meet the requirements as prescribed by 29 CFR 1910.7 for expansion of its recognition. This preliminary finding does not constitute an interim or temporary approval of the applications for UL.

OSHA welcomes public comments, in sufficient detail, as to whether UL has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment should consist of pertinent written documents and exhibits. To consider a comment, OSHA must receive it at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). Should you need more time to comment, OSHA must receive your written request for extension at the address provided above no later than the last date for comments. You must include your reason(s) for any request for extension. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is frivolous or otherwise unwarranted. You may obtain or review copies of UL's requests, the on-site review reports, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL4–93 contains all materials in the record concerning UL's applications.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant UL's expansion requests. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this 11th day of December, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–121 Filed 1–3–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 02–150]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that PolyuMac TechnoCore, Inc. of 1060 E. 30 Street, Hialeah, FL 33013, has applied for an exclusive license to practice the inventions described in NASA Case No. LAR–15767–1, entitled ''Polyimide Precursor Solid Residuum,'' for which a U.S. Patent No. 6,180,746 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15977–1, entitled ''Aromatic Polyimide Foam,'' for which a U.S. Patent No. 6,133,330 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15831–1, entitled ''Hollow Polyimide Microspheres,'' for which a U.S. Patent No. 5,994,418 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15831–2, entitled ''Hollow Polyimide Microspheres,'' for which a U.S. Patent No. 6,235,803 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; NASA Case No. LAR–15831–3, entitled ''Hollow Polyimide Microspheres,'' for which a U.S. Patent No. 6,084,000 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration; and NASA Case No. LAR–15745–1, entitled ''Films, Preimpregnated Tapes and Composites made from Polyimide ''Salt-like'' Solutions,'' for which a U.S. Patent No. 6,222,007 was issued to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATE(S): Responses to this notice must be received by January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199, telephone (757) 864–3230; fax (757) 864–9190.

Dated: December 30, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–194 Filed 1–3–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Safety Analyses of the Potential Inadvertent Disposal of Two Spent Fuel Rods at Low-Level Radioactive Waste Facilities; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission's (NRC) Office of Nuclear

Material Safety and Safeguards (NMSS) is announcing the availability for public comment of a set of draft safety analyses related to the potential inadvertent disposal of two spent fuel rods at a low-level radioactive waste facility. In November 2000, the licensee for Millstone Unit 1 (Dominion Nuclear Connecticut, Inc.) informed the NRC that the location of two spent fuel rods could not be determined and the following investigation by the licensee concluded that the two spent fuel rods may have been inadvertently sent for disposal as Class C low-level radioactive waste. One analysis was prepared for each of the two possible low-level radioactive waste facilities: the Hanford, Washington site and the Barnwell, South Carolina site. The NRC has determined, from these analyses, that the potential presence of the two fuel rods, at either site, would not constitute a present or future risk to public health and safety or the environment. The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the safety analyses is available to the NRC staff. The NRC will review public comments received on the draft documents. In response to those comments, suggested changes will be incorporated, where appropriate, and a final document will be issued.

DATES: Comments on this draft document should be submitted by March 7, 2003. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The draft safety analyses, ''Long-Term Hazard of Millstone Unit 1's Missing Spent Fuel Rods Potentially Disposed at the Barnwell Commercial Low-Level Radioactive Waste Disposal Facility'' and ''Long-Term Hazard of Millstone Unit 1's Missing Spent Fuel Rods Potentially Disposed at the Hanford Commercial Low-Level Radioactive Waste Disposal Facility,'' are available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. They are also available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Access Numbers: Barnwell's analysis—ML023610413; Hanford's analysis—ML023610424)

Members of the public are invited and encouraged to submit written comments to: Christepher McKenney, System Performance Analyst (HP), Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mail Stop T–7J8, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may also be sent electronically to *cam1@nrc.gov*. Copies of comments received may be examined at the ADAMS Electronic Reading Room on the NRC web site, and in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD 20852. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION, CONTACT: Christepher McKenney, Mail Stop T–7J8, Environmental and Performance Assessment Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6663; Internet: *cam1@nrc.gov.*

SUPPLEMENTARY INFORMATION: In November 2000, the licensee for Millstone Unit 1 (Dominion Nuclear Connecticut, Inc.) informed the NRC that the location of two spent fuel rods could not be determined. An investigative team was formed by the licensee and completed its investigation in October, 2001. A follow-up NRC inspection reviewed the findings of the investigation and agrees with the results. The result of the investigation was that there is a chance that the rods may have been unintentionally disposed at the Hanford, Washington, or Barnwell, South Carolina commercial low-level radioactive waste disposal facilities. The most likely explanation was that the rods were inadvertently shipped to Barnwell in 1988, as part of a shipment of Class C low-level radioactive waste. These safety analyses do not address the jurisdictional issues raised by the potential disposal of spent fuel at a shallow low-level waste disposal facility.

There are both short- and long-term considerations for reviewing the health and safety impacts of the rods potentially being at a low-level radioactive waste disposal facility. These include the type and amount of radioactivity present, the current location and disposition of the suspected shipments, potential future groundwater release, and risk to potential inadvertent intruders. Dominion Nuclear Connecticut, Inc., provided an assessment of the risks from the missing fuel on October 5, 2001. A second assessment was provided by Dominion Nuclear Connecticut, Inc., on May 15, 2002, that responded to a NRC request for additional information. After investigating the short- and long-term considerations, for the reasons given in the safety analyses, NRC has determined that the presence of the two fuel rods at either low-level radioactive waste disposal facility does not constitute a present or future risk to the public health and safety or the environment.

Commentors are encouraged to submit their written comments on these two safety analyses to the addresses listed above. To ensure efficient and complete comment resolution, commentors are requested to reference the section, page, and line numbers of the document to which the comment applies, if possible.

Dated at Rockville, MD, this 24th day of December, 2002.

For the Nuclear Regulatory Commission.

Lawrence Kokajko,

Branch Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–154 Filed 1–3–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for an Expiring Information Collection: SF–15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for the continued use of Standard Form 15 (SF–15). SF 15, Application for 10-Point Veteran Preference, is used by agencies, OPM examining offices and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944.

According to the General Services Administration, 45,000 SF–15s were completed last year. Each form requires approximately 10 minutes to complete. The annual estimated burden is 7,497 hours.

We are asking OMB to approve the continuation of the current SF–15. In the 60 day notice published July 19, 2002, we announced our proposal to revise the SF–15 and we invited

comments. We plan to submit the revision later and will address the comments at that time.

For copies of this proposal, contact Mary Beth Smith-Toomey at *mbtoomey@opm.gov* or fax to (202) 418–3251. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver written comments to:

Ellen Tunstall, Assistant Director for Employment Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415.

and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–110 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between between November 1, 2002 and November 30, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Broadcasting Board of Governors

Special Assistant to the Chairman. Effective November 21, 2002.

Special Assistant to the Chairman. Effective November 22, 2002.

Commodity Futures Trading Commission

Administrative Assistant to a Commissioner. Effective November 12, 2002.

Administrative Assistant to the Commissioner. Effective November 21, 2002.

Consumer Product Safety Commission

Executive Assistant to the Chairman. Effective November 14, 2002.

General Counsel to the Chairman. Effective November 21, 2002.

Department of Agriculture

Confidential Assistant to the Deputy Administrator, Office of Community Development. Effective November 6, 2002.

Director of Public Affairs to the Administrator. Effective November 14, 2002.

Special Assistant to the Executive Assistant for Homeland Security. Effective November 15, 2002.

Confidential Assistant to the Administrator, Risk Management Agency. Effective November 20, 2002.

Department of Commerce

Special Assistant to the Executive Assistant, International Trade Administration. Effective November 12, 2002.

Confidential Assistant to the Assistant Secretary for Economic Development. Effective November 27, 2002.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 1, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective November 7, 2002.

Chief of Staff to the Inspector General. Effective November 7, 2002.

Staff Assistant to the Deputy Assistant Secretary of Defense (Forces Policy). Effective November 13, 2002.

Department of Education

Confidential Assistant to the Special Assistant. Effective November 7, 2002.

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 19, 2002.

Special Assistant to the Director, White House Initiative on Hispanic Education. Effective November 19, 2002.

Deputy Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective November 25, 2002.

Department of Energy

Special Assistant to the Deputy Assistant Secretary for National Security. Effective November 5, 2002.

Daily Scheduler to the Director, Office of Scheduling and Advance. Effective November 26, 2002.

Department of Housing and Urban Development

Advance Coordinator to the Director of Executive Scheduling. Effective November 15, 2002.

Special Assistant to the Assistant Secretary for Congressional and intergovernmental Relations. Effective November 18, 2002.

Congressional Relations Officer to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective November 18, 2002.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective November 18, 2002.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective November 26, 2002.

Department of Justice

Special Assistant to the Director, Bureau of Justice Assistance, Office of Justice Programs. Effective November 7, 2002.

Public Affairs Specialist to the United States Attorney, San Antonio, TX. Effective November 20, 2002.

Department of Labor

Special Assistant to the Director of Scheduling and Advance. Effective November 21, 2002.

Attorney-Advisor to the Solicitor of Labor. Effective November 21, 2002.

Special Assistant to the Assistant Secretary for Administration and Management. Effective November 25, 2002.

Department of State

Program Support Assistant to the Foreign Affairs Officer (Visits). Effective November 15, 2002.

Staff Assistant to the Deputy Assistant Secretary for Equal Employment. Effective November 26, 2002.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective November 14, 2002.

Environmental Protection Agency

Deputy Associate Administrator to the Associate Administrator, Office of Congressional Affairs. Effective November 19, 2002.

General Services Administration

Special Assistant to the Deputy Associate Administrator for Government Policy. Effective November 18, 2002.

Office of Management and Budget

Senior Advisor (Assistant General Counsel) to the General Counsel. Effective November 12, 2002.

Confidential Assistant to the Controller. Effective November 19, 2002.

Small Business Administration

Special Assistant to the Associate Deputy Administrator of Entrepreneurial Development. Effective November 13, 2002.

Senior Advisor for Congressional Affairs (House) to the Assistant Administrator for Congressional and Legislative Affairs. Effective November 14, 2002.

United States Tax Court

Secretary (Confidential Assistant) to a Judge. Effective November 4, 2002.

(Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218).

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–111 Filed 1–3–03; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.

(2) *Form(s) submitted:* RL–231–F.

(3) *OMB Number:* 3220–0107.

(4) *Expiration date of current OMB clearance:* 04/30/2003.

(5) *Type of Request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 300.

(8) *Total annual responses:* 150.

(9) *Total annual reporting hours:* 150.

(10) *Collection description:* Under the Railroad Retirement Act (RRA), benefits are not payable if an annuitant works for an employer covered under the RRA or last non-railroad employer. The collection obtains information regarding an annuitant's work and earnings from a non-railroad employer. The information will be used for determining whether benefits should be withheld.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–131 Filed 1–3–03; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pension Plan Reports.

(2) *Form(s) submitted:* G–88p, G–88r, and G–88r.1.

(3) *OMB Number:* 3220–0089.

(4) *Expiration date of current OMB clearance:* 2/28/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 1,515.

(9) *Total annual reporting hours:* 203.

(10) *Collection description:* The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of a railroad employer's pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–132 Filed 1–3–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

[Extension: Rule 11a1–1(T); OMB Control No. 3235–0478; SEC File No. 270–428]

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collection of information discussed below.

• Rule 11a1–1(T) Transaction Yielding Priority, Parity, and Precedence.

On January 27, 1976, the Commission adopted Rule 11a1–1(T) under the Securities Exchange Act of 1934 (''Exchange Act'') to exempt transactions of exchange members for their own accounts that would otherwise be prohibited under section 11(a) of the Exchange Act. The rule provides that a member's proprietary order may be executed on the exchange of which the trader is a member, if, among other things: (1) The member discloses that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated; (2) any such member through whom that bid or offer is communicated discloses to others participating in effecting the order that it is for account of a member; and (3) immediately before executing the order, a member (other than a

specialist in such security) presenting any order for the account of a member on the exchange clearly announces or otherwise indicates to the specialist and to other members then present that he is presenting an order for the account of a member.

Without these requirements, it would not be possible for the Commission to monitor its mandate under the Exchange Act to promote fair and orderly markets and ensure that exchange members have, as the principle purpose of their exchange memberships, the conduct of a public securities business.

There are approximately 1,000 respondents that require an aggregate total of 333 hours to comply with this rule. Each of these approximately 1,000 respondents makes an estimated 20 annual responses, for an aggregate of 20,000 responses per year. Each response takes approximately 1 minute to complete. Thus, the total compliance burden per year is 333 hours (20,000 minutes/60 minutes per hour = 333 hours). The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $33,333 (333 hours @ $100).

Compliance with Rule 11a–1(T) is necessary for exchange members to make transactions for their own accounts under a specific exemption from the general prohibition of such transactions under section 11(a) of the Exchange Act. Compliance with Rule 11a–1(T) does not involve the collection of confidential information. Rule 11a–1(T) does not have a record retention requirement per se. However, responses made pursuant to Rule 11a–1(T) are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4. Please note that 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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Action Associate Executive Director for the Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 20, 2002.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 03–138 Filed 1–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47105; File No. SR–Amex–2002–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to a Six-Month Extension of the Exchange's Pilot Program for Automatic Execution of Orders for Exchange Traded Funds

December 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 December 4, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks a six-month extension of Amex Rule 128A to continue its pilot program for the automatic execution of orders for Exchange Traded Funds (''ETFs''), with certain modifications as described below. Proposed changes to the text of Rule 128A are set forth below.[4] New text is in italics. Deleted text is in brackets.

Automatic Execution for Exchange Traded Funds

Rule 128A. The Exchange shall determine the size and other parameters of orders eligible for execution by its Automatic Execution System (Auto-Ex). An Auto-Ex eligible order for any account in which the same person is directly or indirectly interested may only be entered at intervals of no less than *10* [30] seconds between entry of each such order *on the same side of the market* in a security. Members and member organizations are responsible for establishing procedures to prevent orders in a security *on the same side of the market* for any account in which the same person is directly or indirectly interested from being entered at intervals of less than *10* [30] seconds.

* * * * *

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 19, 2001, the Commission approved the Exchange's proposal, adopted as Amex Rule 128A, to permit the automatic execution of orders for ETFs on a six-month pilot program basis.[5] Since that time, the Exchange has extended the pilot program twice, in December 2001 and June 2002, each time for six months.[6] The Exchange now seeks to extend the pilot program, with certain modifications, for an additional six months.

Since 1986, the Exchange has had an automatic order execution feature (''Auto-Ex'') for eligible orders in listed options. The Chicago Board Options Exchange, Philadelphia Stock Exchange, and Pacific Exchange established similar automatic option order execution features at about the same time as the Amex, and the newest options exchange, the International Securities Exchange, also features automatic order execution. Auto-Ex,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Commentary to Rule 128A, providing details of the pilot program that are summarized in Section II of this notice, will remain unchanged.

[5] *See* Securities Exchange Act Release No. 44449 (June 19, 2001), 66 FR 33724 (June 25, 2001) (''June 2001 Release'') (approving File No. SR–Amex–2001–29).

[6] *See* Securities Exchange Act Release Nos. 45176 (December 20, 2001), 66 FR 67582 (December 31, 2001) and 46085 (June 17, 2002) 67 FR 42836 (June 25, 2002) (notices of filing and immediate effectiveness of File Nos. SR–Amex–2001–105 and SR–Amex–2002–42, respectively).

accordingly, has been a standard feature of the options markets for a number of years.

In 1993, the Amex commenced trading Standard and Poor's Depositary Receipts® (''SPDRs®''), the first ETF to be listed and traded on the Exchange. ETFs are individual securities that represent a fractional, undivided interest in a portfolio of securities. Currently, more than 100 ETFs are listed on the Amex. Like an option, an ETF is a derivative security, and, according to the Amex, its price is a function of the value of the portfolio of securities underlying the ETF. Thus, as is the case with options, the Exchange asserts that it is not the price discovery market for ETFs, and that the price discovery market is the market or markets where the underlying securities trade.

The Exchange is now proposing to extend its current Auto-Ex technology for an additional six months to ETFs listed under Amex Rules 1002, 1002A, and 1202. The Amex represents that this will provide investors that send eligible orders to the Exchange with faster executions than they otherwise would receive. The Exchange believes that many investors desire rapid executions in trading securities that are priced derivatively since the value of the underlying instruments may fluctuate during order processing. The Amex, moreover, will continue under the pilot extension to incorporate a price improvement algorithm into Auto-Ex for ETFs, thus to provide investors with better execution prices on their orders. The price improvement algorithm works in the following manner:

When the Amex establishes the National Best Bid or Offer (''NBBO''),[7] Auto-Ex is programmed to execute eligible incoming ETF orders at the APQ plus a programmable number of trading increments with respect to the Amex bid, and less a programmable number of trading increments in the case of the Amex offer. For example, if the APQ were 90.10 to 90.20, and the APQ constituted the NBBO, incoming sell orders might be automatically executed at 90.12 (the Amex bid plus two ticks) and incoming buy orders might be executed at 90.18 (the Amex offer less two ticks). If the Amex does not establish the NBBO, Auto-Ex is programmed to execute eligible incoming ETF orders at or better than the NBBO up to a specified number of trading increments relative to the APQ.[8] Auto-Ex executes an eligible order at the improved price relative to the APQ unless such execution would result in a trade-through with respect to the price of an away market that is a participant in the Intermarket Trading System (''ITS''). If a trade through would result, the order is routed to the specialist for electronic processing through the Amex electronic order book.[9]

For example, assume that Auto-Ex is programmed to execute the order at the Amex bid plus two ticks. If the Amex bid were 90, and an away ITS market were bidding 90.01, an incoming sell order would be automatically executed on the Amex at 90.02. Continuing with this example, if the away market were bidding 90.02, an incoming sell order would be automatically executed on the Amex at 90.02 (matching the away market). If the away market were bidding 90.03, the incoming sell order would not be automatically executed. Instead, it would be routed to the specialist for electronic processing through the Amex electronic order book.

The amount of price improvement that the system provides, both when the Amex establishes the NBBO and when it does not, is determined by the Auto-Ex Enhancements Committee (''Committee'') upon the request of a specialist and may differ among ETFs. The Committee consists of the Exchange's four Floor Governors and the Chairmen (or their designees) of the Specialists Association, Options Market Makers Association, and the Floor Brokers Association, respectively. The Exchange anticipates that the amount of price improvement will vary among securities based upon such factors as the width of the spread, the volatility of the basket of securities underlying the ETF, and liquidity of available hedging vehicles. The amount of price improvement may be adjusted intra-day by the Committee.

As detailed in Amex Rule 128A, Auto-Ex for ETFs with price improvement is unavailable when the spread is at a specified minimum and maximum variation, which may be adjusted security to security. The Committee will determine, upon the request of a specialist, the minimum and maximum spreads at which Auto-Ex is unavailable. As further provided in the rule, Auto-Ex is also unavailable with respect to incoming sell orders when the Amex bid is for 100 shares, and similarly unavailable with respect to incoming buy orders when the Amex offer is for 100 shares.

Orders that are otherwise Auto-Ex eligible orders are also routed to the specialist, and not automatically executed, in situations where the specialist in conjunction with a Floor Governor or two Floor Officials determine that quotes are not reliable and the Exchange is experiencing communications or systems problems, ''fast markets,'' or delays in the dissemination of quotes. Members and member organizations are notified when the Exchange has determined that quotes are not reliable prior to disengaging Auto-Ex.

Specialists and Registered Options Traders (''ROTs'') that sign onto the system are automatically allocated the contra side of Auto-Ex trades for ETFs. Due to the automatic price improvement feature, the specialist and ROTs that sign onto Auto-Ex for ETFs are deemed to be on parity for purposes of allocating the contra side of ETF Auto-Ex trades. Amex Rule 128A incorporates the following methodology for the allocation of the contra side to Auto-Ex ETF trades.

Number of ROTs signed on to auto-ex in a crowd	Approximate number of trades allocated to the specialist throughout the day (''target ratio'') (percent)	Approximate number of trades allocated ROTs signed on to auto-ex throughout the day (''target ratio'') (percent)
1	60	40
2–4	40	60

[7] The term ''establish'' as used in this context of Amex Rule 128A means that the Amex Published Quote (''APQ'') is currently at the NBBO, regardless of whether or not the Amex was the first exchange to be at that price. *See* June 2001 Release, *supra* note.

[8] The number of trading increments designated for price improvement when the Amex establishes the NBBO may be different than the number of increments designated for price improvement when the Amex does not establish the NBBO. *Id.*

[9] Once an order that is Auto-Ex eligible is sent to the Exchange, the person that initiated the order has no control over its execution. This is the case regardless of whether the order is executed by Auto-Ex or is executed by the specialist because Auto-Ex is unavailable. If the order is routed to the specialist for handling because Auto-Ex is unavailable, the specialist does not know if the order is for the account of a broker-dealer or for the account of a customer. This information is in the Exchange's order processing systems and is unavailable to the specialist.

Number of ROTs signed on to auto-ex in a crowd	Approximate number of trades allocated to the specialist throughout the day (''target ratio'') (percent)	Approximate number of trades allocated ROTs signed on to auto-ex throughout the day (''target ratio'') (percent)
5–7	30	70
8–15	25	75
16 or more	20	80

At the start of each trading day, the sequence in which trades are to be allocated to the specialist and ROTs signed onto Auto-Ex is randomly determined. Auto-Ex trades then are automatically allocated in sequence on a rotating basis to the specialist and to the ROTs that have signed onto the system so that the specialist and the crowd achieve their ''target ratios'' over the course of a trading session. If an Auto-Ex eligible order is greater than 100 shares, Auto-Ex divides the trade into lots of 100 shares each. Each lot is considered a separate trade for purposes of determining target ratios and allocating trades within Auto-Ex.

Round lot orders delivered to the post electronically for 2,000 shares or less are eligible for Auto-Ex for ETFs. Orders for an account in which a market maker in ETFs registered as such on another market has an interest are ineligible for Auto-Ex for ETFs. If orders for such market makers were eligible for Auto-Ex with price improvement, the Exchange represents, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for other investors. (Orders for Amex Registered Traders are ineligible for Auto-Ex for ETFs pursuant to Commentaries .04 and .05 to Rule 111 and Amex Rule 950(c).)

The Exchange proposes that Amex Rule 128A now stipulate that Auto-Ex eligible orders for any account in which the same person is directly or indirectly interested may be entered only at intervals of 10 seconds or more between the entry of each such order in an ETF.[10] The Exchange states that Amex specialists and ROTs are willing to provide Auto-Ex with price improvement for orders of a certain size. If persons were allowed to enter more than one Auto-Ex eligible order for an account in which they had a direct or indirect interest at intervals of less than 10 seconds, according to the Exchange, Amex specialists and ROTs would be unable to make markets with the proposed liquidity for all investors. Under Amex Rule 128A, members and member organizations are responsible for establishing procedures to prevent orders for any account in which the same person is directly or indirectly interested from being entered at intervals of less than 10 seconds with respect to an ETF.

The specialist may request the Exchange to increase the maximum size of Auto-Ex eligible orders. Under Amex Rule 128A, such requests are reviewed by the Committee, which approves, disapproves, or conditionally approves such requests. The rule directs the Committee to balance the interests of investors, the specialist, ROTs in the crowd, and the Exchange in determining whether to grant a request to increase the size of Auto-Ex eligible orders. The Committee also may consider requests from the specialist or ROTs to reduce the size of Auto-Ex eligible orders, balancing the same interests that it would consider in reviewing a request to increase the size of Auto-Ex eligible orders. The Committee is not permitted, however, to reduce the size of Auto-Ex eligible orders below 2,000 shares.

In addition, under Amex Rule 128A, the Committee may delegate its authority to one or more Floor Governors. The rule provides, however, that the Committee must meet promptly to review a Floor Official's decision in the event that a Floor Governor acts pursuant to delegated authority.

Amex Rule 128A further provides that in the event of system problems or unusual market conditions, a Floor Governor is permitted to reduce the size of Auto-Ex eligible orders below 2,000 shares or increase the size of Auto-Ex eligible orders up to 5,000 shares. Any such change is temporary and lasts only until the end of the unusual market condition or the correction of the system problem. Members and member organizations will be notified when the size of Auto-Ex eligible orders is adjusted due to system problems or unusual market conditions.

Amex Rule 128A also provides that the Chairman and Vice Chairman of the Exchange, acting jointly, will determine which ETFs are Auto-Ex eligible.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The proposed rule change will allow the Auto-Ex for ETFs pilot program to continue for an additional six months. The proposal also facilitates the comparison and settlement of trades since Auto-Ex transactions result in ''locked-in'' trades. Auto-Ex for ETFs, moreover, automatically provides investors with price improvement on their orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, in fact, will enhance competition among markets and market makers and thereby benefit investors by allowing the Exchange to continue to provide Auto-Ex for ETFs with price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

A member firm submitted a comment letter to the Commission dated September 4, 2002, on SR-Amex-2002-42 (the previous extension of the Auto-Ex for ETFs Pilot). In this correspondence, the member organization objected to the 30-second ''speed bump'' in Rule 128A and sought

[10] The proposed rule change reduces the interval from 30 seconds to 10 seconds, as discussed in Section II.C. below.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

clarification that the 30-second window applied only to electronic orders on the same side of the market in a security. On November 20, 2002, the Amex Board authorized revisions to Rule 128A to reduce the speed bump to 10 seconds (less than the 15 second window that is standard at options exchanges) and to clarify that the new, 10 second, window only applies to orders on the same side of the market in a security. The Exchange believes that it has addressed the concerns articulated by the member organization.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change has therefore become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

The Amex has requested that the Commission waive the usual five-day notice and 30-day pre-operative waiting periods. The Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date and to waive the five-day notice period so that the pilot can continue without the 30-day delay. Thus, the Commission waives the five-day notice period and designates that the proposal become operative immediately.[15] The pilot extension will expire June 19, 2003.

At any time within 60 days of the filing of this 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.[16]

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–99 and should be submitted by January 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–182 Filed 1–3–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 240.19b–4(f)(6).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47103; File No. SR–NASD–2002–180]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding the Prohibition Against Guarantees and Sharing in Customer Accounts

December 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 December 18, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 2330(e) to clarify that members and their associated persons are prohibited from guaranteeing any customer against loss in connection with any securities transaction or in any securities account of such customer. In addition, NASD is proposing that associated persons obtain written authorization from their employing member firm and the customer prior to sharing in a customer's account under Rule 2330(f). The proposed rule change to Rule 2330(f) also deletes the requirement that members and associated persons obtain the written authorization of the member carrying the account prior to sharing in a customer's account. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

A. 2330. Customers' Securities or Funds

(a) Through (d) No Change.

(e) Prohibition Against Guarantees

No member or person associated with a member shall guarantee a customer against loss in *connection with* any securities [account] *transaction or in any securities account* of such customer [carried by the member or in any securities transaction effected by the member with or for such customer].

(f) Sharing in Accounts: Extent Permissible

(1)(A) Except as provided in paragraph (f)(2) no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if (i) such [member or] person associated with a member obtains prior written authorization from the member [carrying the account] *employing the associated person; (ii) such member or person associated with a member obtains prior written authorization from the customer;* and (iii) [the] *such* member or person associated with a member [shall] shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of

paragraph (f)(1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term ''immediate family'' shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (f)(1), a member or person associated with a member that is acting as an investment adviser (whether or not registered as such) may receive compensation based on a share in profits or gains in an account if *(i)* [the member or] *such* person associated with a member seeking such compensation obtains prior written authorization from the member [carrying the account] *employing the associated person; (ii) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer;* [,] and *(iii)* all of the conditions in Rule 205–3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends NASD rules regarding the prohibition against guarantees and requirements governing sharing in customer accounts. Earlier this year, in response to requests for interpretive guidance, NASD reviewed the application of these rules. Based on its review, NASD is proposing changes to these rules to clarify their scope and enhance their effectiveness.

Rule 2330(e)—Prohibition Against Guarantees

NASD Rule 2330(e) currently prohibits a member or its associated persons from guaranteeing a customer against loss in any customer's account that is carried by the member and in any securities transaction effected by the member with or for the customer. A strict reading of the rule would limit its application to only those guarantees made by the member (or the member's associated persons) carrying the customer's account and those guarantees made by the member (or the member's associated persons) effecting a securities transaction with or for the customer. Consequently, guarantees such as those made by an associated person to customers whose accounts are not carried by that associated person's member potentially would not be prohibited under this reading of the rule. Similarly, guarantees made by an associated person to customers whose securities transactions are not effected by that associated person's member potentially would not be prohibited under this strict reading.

NASD proposes to amend Rule 2330(e) to clarify that the rule prohibits a member and its associated persons from making guarantees to any customer because such guarantees create the expectation that the customer is insulated from market risk intrinsic in securities ownership and may induce the customer to engage in a securities transaction that is not otherwise appropriate for the customer. Even prior to the adoption of Rule 2330(e) (formerly Article III, Section 19(e) of the NASD Rules of Fair Practice), the SEC stated, with respect to guarantees, that ''the observance of just and equitable principles of trade does not permit the use of statements which lead an unwary purchaser to the mistaken belief that his transactions are free of risk.'' [3]

The proposed rule change will clarify that members and their associated persons are prohibited from making guarantees to any customer, not just those customers whose accounts are carried by the member or those customers for whom a member is effecting a securities transaction.[4]

Rule 2330(f)—Sharing in Accounts

NASD Rule 2330(f) currently prohibits members and associated persons from sharing in the profits or losses in a customer's account except under certain limited conditions.[5] Rule 2330(f)(1)(A) permits a member or person associated with a member to share in the profits or losses in a customer's account if such member or person associated with a member obtains prior written authorization from the member that is carrying the account and the sharing is proportionate to the member's or associated person's contributions to the account. NASD Rule 2330(f)(2) permits a member or person associated with a member that acts as an investment adviser to receive compensation based on a share in the profits or gains in a customer's account if such member or person associated with a member obtains prior written authorization from the member that is carrying the account, and the conditions specified in Rule 205–3 under the Investment Advisers Act of 1940 are satisfied.

Currently, both Rule 2330(f)(1)(A) and Rule 2330(f)(2) require the member or associated person that is sharing in the profits or losses in a customer's account to obtain the prior written authorization of the member that is carrying the account. These rules do not necessarily require an associated person to obtain the prior written authorization of his or her employing member when sharing in the profits or losses in a customer's account. Employing members only would be notified if they also were the carrying member of the account or if the arrangement triggered application of another NASD rule, *e.g.*, Rules 3030 (Outside Business Activities of an Associated Person), 3040 (Private Securities Transactions of an Associated Person), or 3050 (Transactions for or by Associated Persons).[6] NASD believes

[3] *In the Matter of Philips & Company,* 37 S.E.C. 66, 71 (1956).

[4] The proposed rule change is not, however, intended to affect the types of guarantees that currently are permitted under the rule; rather, the proposed amendment seeks to clarify the circumstances under which certain guarantees would be prohibited. For example, a ''guarantee'' that is extended to all holders of a particular security by an issuer as part of that security generally would not be prohibited under Rule 2330(e).

[5] For example, this provision formed the basis of an NASD enforcement action against Credit Suisse First Boston, Inc. in which NASD found that Credit Suisse First Boston's practice of sharing in the profits in customers' accounts in exchange for allocating initial public offering securities to such customers violated Rule 2330(f). In January 2002, Credit Suisse First Boston settled this matter without admitting or denying the allegations. *See* Credit Suisse First Boston Corporation, Letter of Acceptance, Waiver and Consent, No. CAF020002 (Jan. 22, 2002).

[6] Rule 3030, among other things, requires that associated persons notify their employer member of any business activity outside the scope of their relationship with the member. Rule 3040, among other things, requires that associated persons obtain written approval from their employer member before engaging in any securities transaction for which they have or may receive selling compensation outside the regular course or scope of their employment with the member. Rule 3050,

that the current requirement of receiving authorization from (and only from) the carrying member of the customer account in which a member or associated person intends to share is not the most effective regulatory approach to address the potential risks of such arrangements. NASD believes that it is important that employing members be notified and affirmatively authorize sharing in a customer's account so that they are better able to supervise their associated persons and ensure compliance with NASD rules and other applicable laws and regulations.

In addition, neither Rule 2330(f)(1)(A) nor Rule 2330(f)(2) require a member or its associated persons to obtain the prior written authorization of the customer in whose account they intend to share. NASD believes that it is important for a customer to provide his or her written approval prior to a member or its associated persons sharing in the profits or losses in that customer's account. NASD believes that it is important that customers be provided the opportunity to affirmatively authorize a member or associated person to share in their accounts.

Therefore, NASD is proposing to amend Rules 2330(f)(1)(A) and 2330(f)(2) to require that, when sharing in a customer's account, associated persons obtain the prior written authorization of their employing member and that members and their associated persons obtain the prior written authorization of the customer in whose account they will be sharing. NASD notes that, notwithstanding a member's or associated person's compliance with the requirements of Rule 2330(f), the conduct permitted under Rule 2330(f) may trigger notice and other requirements under other NASD rules, including NASD Rules 3030, 3040, and 3050. Rule 2330(f) does not affect the applicability of such other rules to these arrangements.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which require, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the proposed rule change is intended to facilitate compliance with Rule 2330(e) by clarifying the conduct prohibited by the rule, and to strengthen the regulatory protections provided in Rule 2330(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–180 and should be submitted by January 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–184 Filed 1–3–03; 8:45 am]

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among other things, requires an associated person to notify his or her employer member in writing prior to opening an account or placing an initial order for the purchase or sale of securities with another member and to notify that member in writing of his or her employment relationship with the employer member.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47104; File No. SR–NYSE–2002–39]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. (''NYSE'') To Amend NYSE Rule 123D With Respect to Openings, Reopenings and Halts in Trading for Stocks Traded on the Exchange

December 30, 2002.

On August 29, 2002, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 123D: Openings and Halts in Trading. The proposed amendments would shorten the minimum time period between tape indications and reopenings in stocks that are subject to a trading halt during the trading day. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on November 26, 2002.[3] The commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission believes that the NYSE's amendments to NYSE Rule 123D to revise the procedures for re-opening after a trading halt strike a reasonable balance between preserving the price discovery process and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46852 (November 19, 2002), 67 FR 70796.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

providing timely opportunities for investors to participate in the market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[6] that the proposed rule change (SR–NYSE–2002–39), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–183 Filed 1–3–03; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 4142]

Culturally Significant Objects Imported for Exhibition Determinations: ''Thomas Gainsborough, 1727–1788''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Thomas Gainsborough, 1727–1788,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about February 9, 2003 to on or about May 11, 2003; the Museum of Fine Arts, Boston, MA, from on or about June 15, 2003 to on or about September 14, 2003; and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Orde F. Kittrie, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/401–4779). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 20, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–198 Filed 1–3–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Boston-Maine Airways Corp., D/B/A PAN AM Clipper Connection for Issuance of Amended Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 2002–12–20) Docket OST–00–7668.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection fit, willing, and able to conduct operations using large aircraft, and (2) awarding it an amended certificate to engage in interstate scheduled air transportation of persons, property, and mail, using large aircraft.

DATES: Persons wishing to file objections should do so no later than January 13, 2003.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–00–7668 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: December 27, 2002.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–185 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 201: Aeronautical Operational Control (AOC) Message Hazard Mitigation (AMHM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 201 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 201: Aeronautical Operational Control.

DATES: The meeting will be held on January 21–23, 2003 11 a.m.

ADDRESSES: The meeting will be held at Continental Airlines, Flight Training Facility, 17441 JFK Blvd., Houston, TX.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 201 meeting. The agenda will include:

- January 21–23:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA Procedures, Review Agenda, Background)
  - Review Terms of Reference per the December 5, 2002, RTCA Program Management Committee
  - Review proposed Phase I document outline
  - Collect input from action item groups
  - Draft other sections of Phase I Document
  - Review and revise drafts, make further action item assignments
  - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Note: This agenda will be followed as appropriate over the course of 3 days. Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement tot he committee at any time.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

Issued in Washington, DC, on December 23, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–206 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM), Fifteenth Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on January 21–23, 2003, starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 19(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- January 21:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting)
  - Status of Working Group (WG)–4, Transition Document for VHF Digital Link Mode 3
  - Status of WG–5, Proposed Change 1 to the NEXCOM Safety and Performance Requirements (SPR)
  - Status of WG–6, Interoperability of NEXCOM
  - Resolve Final Review and Comment (FRAC) comments on deft WG–6 Interoperability Document for plenary approval
- January 22:
  - WG–5 meeting to review proposed final Change 1 to SPR, and recommend approval for FRAC of Change 1
- January 23:
  - WG–4 meeting to review Transition Document

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 23, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–207 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 03–10–C–00–MHT Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Manchester Airport 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 February 5, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, ANE–600, attn: Priscilla Scott, 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 Kevin A. Dillon, Airport Director of the City of Manchester, Department of Aviation at the following address: One Airport Road, Suite 300, Manchester, New Hampshire, 03103–3395.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester, Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, 12 New England Executive Park, Burlington, Massachusetts, 01803, (781) 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 a PFC at Manchester Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 20, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Manchester, Department of Aviation 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 April 1, 2003.

The following is a brief overview of the application.

Proposed charge effective date: December 1, 2013.

Proposed charge expiration date: January 1, 2020.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $50,662,827.

Brief description of proposed project(s): Runway 17–35 Extension and Reconstruction. Residential and School Sound Insulation Program.

Phase II Terminal Expansion: Construction and Construction Management.

Phase II Terminal Expansion: Baggage Handling Devices, Site work, Ramp Upgrades, and Jet Bridges.

Phase II Terminal Expansion: Design Fees.

PFC Application Development.

Class or classes of air carriers that the public agency has requested not be required to collect PFCs: On demand air taxi/commercial operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: 16 New England Executive Park, Burlington, Massachusetts.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Manchester, Department of Aviation.

Dated: Issued in Burlington, Massachusetts on December 20, 2002.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 03–208 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP02–009

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect recall.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency initiate an investigation of model year (MY) 1995 Dodge Dakota vehicles to address an alleged safety-related defect. The petition is identified as DP02–009.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: Mr. Edward W. Bailey of Metairie, LA, submitted a petition to NHTSA by letter (undated), requesting that NHTSA initiate a defect investigation of model year (MY) 1995 Dodge Dakota vehicles. The petitioner alleges that the chassis on the passenger side of his vehicle cracked behind the right front wheel, through no fault of his own, which he believes constitutes a safety defect. A review of ODI's database shows that there are nine consumer complaints related to frame cracks on MY 1995–96 Dodge Dakota vehicles (hereinafter referred to as the subject vehicles), not including the petitioner's complaint. No similar complaints were found in the three model years (1992, 1993, 1994) prior to the subject vehicle model years, and no complaints were found in any model years after the subject vehicles. None of the complaints reported loss of control, crashes, injuries, or fatalities. Furthermore, a similar review of consumer complaints of frame cracks on vehicles that are peers of the subject vehicles also shows no reports of loss of control, crashes, injuries or fatalities. Most of the complainants who own or owned the subject vehicles were contacted to confirm the reported information and obtain additional information. The average mileage at failure of the frame on the subject vehicles was reported by consumers to be approximately 93,000.

After review and analysis of all the available information, it does not appear that cracking of the frame in the subject vehicles at the rate reported constitutes a defect in vehicles that average 93,000 miles. This is especially true given that there have been no reported crashes, injuries, or deaths. Therefore, we do not believe that an investigation would result in the identification of a potential safety-related defect and this petition is denied.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of an alleged safety-related defect, as defined by the petitioner, in the subject vehicles at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: December 22, 2002.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–209 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on Exemption Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on exemption applications in JULY–SEPTEMBER 2002. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on December 20, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
Modification Exemptions				
7657–M	DOT–E 7657	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.201, 173.202, 173.203, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To modify the exemption to authorize the transportation of additional Division 2.1, 2.2, 2.3 and Class 3 materials in a non-DOT specification stainless steel cylinder.
7657–M	DOT–E 7657	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.201, 173.202, 173.203, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To modify the exemption to authorize the transportation of additional Division 2.1 and 2.2 materials in a non-DOT specification stainless steel cylinders.
8232–M	DOT–E 8232	National Refrigerants, Inc., Philadelphia, PA.	49 CFR 173.123(a), 173.315.	To modify the exemption to authorize the transportation of a Division 2.2 material in non-DOT specification portable tanks.
8915–M	DOT–E 8915	E.I. DuPont de Nemours and Company, Wilmington, DE.	49 CFR 173.301(d), 173.302(a)(3), 173.302(a)(5).	To modify the exemption to authorize the transportation of an additional Division 2.1 material in a manifolded DOT Specification cylinder.

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
9419–M	DOT–E 9419	FIBA Technologies, Inc., Westboro, MA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e), Part 107, Subpart B, Appendix B.	To modify the exemption to authorize the elimination of the annual quantity limitation when performing the acoustic emission testing (AET) on DOT Specification cylinders for the transportation of various Division 2.1 and 2.2 gases.
9508–M	DOT–E 9508	Callery Chemical Company, Pittsburgh, PA.	49 CFR 173.202(a)(3), 173.34(e), 175.3.	To modify the exemption to authorize the transportation of an additional Division 4.3 material in DOT Specification cylinders.
10389–M	DOT–E 10389	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 174.67(i)	To modify the exemption to authorize the transportation of a Division 6.1 and additional Class 8 material in tank cars.
10789–M	DOT–E 10789	Allied Universal Corporation, Miami, FL.	49 CFR 173.304(a)(2), 173.34(d), 173.34(e).	To modify the exemption to authorize the retest period from 2 to 5 years for non-DOT specification fully open-head steel salvage cylinders and the use of a 3AA480 cylinder for the transportation of Division 2.3 materials.
10985–M	DOT–E 10985	Georgia-Pacific Corporation, Atlanta, GA.	49 CFR 174.67(i), (j)	To modify the exemption to authorize the transportation of a Division 5.1 material in DOT Specification tank cars.
11262–M	DOT–E 11262	CAIRE Inc. (Division of CHART Industries), Burnsville, MN.	49 CFR 173.316(c)(2), 175.3, 178.57–8(c).	To modify the exemption to authorize a new non-DOT specification cylinder design for the transportation of Division 2.2 materials used in a liquid oxygen supply system.
11373–M	DOT–E 11373	Chemical Resources, Inc., Louisville, KY.	49 CFR 117.848(d)	To modify the exemption to authorize for-hire contract carriers the ability to transport Division 4.2 materials on the same vehicle with Class 8 materials.
11379–M	DOT–E 11379	TRW Automotive, Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h), 173.302.	To modify the exemption to authorize extension of the 10-hour lot duration for the non-DOT specification pressure vessels used as components of automobile vehicle safety systems.
11380–M	DOT–E 11380	Baker Atlas (Houston Technology Center), Houston, TX.	49 CFR 173.34(d), 178.37–13, 178.37–15, 178.37–5.	To modify the exemption to authorize a new tank assembly design for the non-DOT specification seamless cylinders transporting Division 2.1 materials.
11401–M	DOT–E 11401	Agilent Technologies, Inc., Santa Clara, CA.	49 CFR 172, 173.124, 173.125, 174, 175, 176, 177.	To modify the exemption to authorize an increase from 6 grams to a maximum of 9 grams of cesium in the inner cylinder device.
11650–M	DOT–E 11650	Autoliv ASP, Inc., Ogden, UT.	49 CFR 178.65–9	To modify the exemption to authorize an additional design qualification of the non-DOT specification pressure vessel sidewall opening for the transportation of Division 2.2 materials.
11759–M	DOT–E 11759	Honeywell International, Inc., Morristown, NJ.	49 CFR 179.15(a)	To modify the exemption to authorize the use of an additional specification tank car with increased wall thickness for the transportation of Division 6.1 materials.
11970–M	DOT–E 11970	ExxonMobil Chemical Company, Houston, TX.	49 CFR 172.101, 178.245–1(c).	To modify the exemption to authorize the use of alternative size non-DOT specification steel portable tanks for the transportation of a Division 4.2 material.
12398–M	DOT–E 12398	Praxair Inc., Danbury, CT	49 CFR 173.34(d), 178.35(e).	To modify the exemption to authorize the transportation of Division 2.3 and an additional Division 2.2 material in DOT 3A and 3AA cylinders equipped with an alternative relief device and to add cargo vessel as an additional mode of transportation.
12690–M	DOT–E 12690	Air Liquide America Corporation, Houston, TX.	49 CFR 173.304(a)(2), Note 2.	To modify the exemption to authorize cargo vessel as an additional mode for the transportation of a Division 2.3 material in DOT Specification 3AA steel cylinders.
12844–M	DOT–E 12844	Delphi Automotive Systems, Troy, MI.	49 CFR 173.301(h), 173.302(a), 175.3.	To modify the exemption to authorize relief from the requirement for each non-DOT specification pressure vessel longitudinal weld seam to be 100% radiographically inspected for the transportation of Division 2.2 materials.
12855–M	DOT–E 12855	Kraton Polymers U.S. LLC, Belpre, OH.	49 CFR 172.302(c), 173.240.	To reissue the exemption originally issued on an emergency basis for the transportation of non-DOT specification pressure vessels containing a Class 3 material.
12917–M	DOT–E 12917	Northwest Ohio Towing & Recovery, Inc., Beaverdam, OH.	49 CFR 173.242(b)	To reissue the exemption originally issued on an emergency basis for the transportation of Class 3 materials in non-DOT specification cargo tanks (aviation refuelers).

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
13002–M	DOT–E 13002	Department of Defense (MTMC), Fort Eustis, VA.	49 CFR 172.301(c), 173.203(a), 173.306(f)(1).	To modify the exemption to reissue the exemption originally issued on an emergency basis for the transportation of Division 2.2 materials in accumulators.
13015–M	DOT–E 13015	BOC Gases, Murray Hill, NJ.	49 CFR 172.203(a), 172.301(c), 173.400a(a)(1), 178.35(f).	Modification request to provide a transitional period for use of cylinder collars that obscure required markings.
13016–M	DOT–E 13016	Carrier Transicold, Syracuse, NY.	49 CFR 172.301(c), 173.24(b)(1).	To reissue the exemption originally issued on an emergency basis for the release of a Division 2.2 gas from a DOT Specification cyclinder used in refrigerating equipment.
		New Exemptions		
12630–N	DOT–E 12630	Chemetall GmbH Gesellschaft, Langelsheim, DE.	49 CFR 172.102(a)(2) & (c)(7)(ii).	To authorize the transportation in commerce of lithium alkyls, Division 4.2, in non-DOT specification IM 101 portable tanks with an equivalent minimum shell thickness less than that prescribed for the material. (modes 1, 2, 3)
12753–N	DOT–E 12753	Praxair, Inc., Danbury, CT	49 CFR 173.304(a)	To authorize the transportation in commerce of certain toxic gases in 3AX and 3AAX cylinders not presently authorized for use in transporting dichlorosilane, Division 2.3. (mode 1)
12872–N	DOT–E 12872	Southern California Edison, San Clemente, CA.	49 CFR 173.403	To authorize the one-time transportation in commerce of specially designed equipment containing Class 7 radioactive material. (mode 2)
12874–N	DOT–E 12874	Zomeworks Corporation, Albuquerque, NM.	49 CFR 171 to 180	To authorize the transportation in commerce of machine components that are charged with non-flammable, non-toxic refrigerant gas without packaging or communication requirements. (modes 1, 2, 3, 4, 5)
12953–N	DOT–E 12953	Westinghouse Electric Company, Pittsburgh, PA.	49 CFR 173.453(d)	To authorize the transportation in commerce of packages of fissile material that exceed the quantities presently authorized. (modes 1, 2)
12955–N	DOT–E 12955	Air Cruisers Company, Belmar, NJ.	49 CFR 172.301(c), 173.219(b)(1).	To authorize the transportation in commerce of lifesaving appliances containing a compressed gas cylinder that is filled in excess of its marked service pressure. (modes 1, 4, 5)
12972–N	DOT–E 12972	Voltaix, Inc., North Branch, NJ.	49 CFR 173.301(j)	To authorize the transportation in commerce of non-DOT specification cylinders for export containing various compressed gases without pressure relief devices. (modes 1, 3)
12982–N	DOT–E 12982	Arthur L. Fleener, Ames, IA.	49 CFR 175.320	To authorize the transportation in commerce of Division 1.1 explosives, which are forbidden for shipment by passenger-carrying aircraft to remote areas when no other means of transportation is available. (mode 5)
12994–N	DOT–E 12994	Air Liquide American Corporation, Houston, TX.	49 CFR 173.34(d)	To authorize the transportation in commerce of certain DOT specification cylinders and cylinders manufactured to a foreign specification without pressure relief devices. (modes 1, 3)
12995–N	DOT–E 12995	The Dow Chemical Company, Midland, MI.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of inner metal receptacles which have been subjected to an alternative testing procedure for use in transporting limited quantities of compressed gases. (modes 1, 2, 3, 4)
12997–N	DOT–E 12997	Albermarle Corporation, Baton Rouge, LA.	49 CFR 173.24(g)(4)	To authorize the transportation in commerce of hazardous materials in a vented bulk packaging (an intermediate bulk container) when venting is not authorized. (modes 1, 2, 3)
13020–N	DOT–E 13020	Bristol Bay Contractors, Inc., King Salmon, AL.	49 CFR 173.243, 173.315	To authorize the transportation in commerce of propane in certain non-specification portable tanks. (modes 1, 2, 3)
13023–N	DOT–E 13023	Energy Conversion Devices, Inc., Troy, MI.	49 CFR 173.187	To authorize the one-time transportation in commerce of one overpack containing a specially designed device containing a Division 4.2 material that exceeds the maximum quantity limitations. (mode 1)
13025–N	DOT–E 13025	Southern California Edison, San Clemente, CA.	49 CFR 173.403, 173.427	To authorize the one-time transportation in commerce of specially designed equipment containing Class 7 hazardous materials. (mode 1)

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
13027–N	DOT–E 13027	Hernco Fabrication & Services, Midland, TX.	49 CFR 173.241, 173.242	To authorize the manufacture, mark, sale and use of a packaging consisting of manifolded non-DOT specification tanks for use in transporting certain Class 3 and Class 8 hazardous materials. (mode 1)
13034–N	DOT–E 13034	ATK–Ammunition Accessories, Inc., Lewiston, ID.	49 CFR 173.24(c), 173.54(a), 173.62.	To authorize the transportation in commerce of explosive components, Division 1.4S in specially designed packaging. (mode 1)
13048–N	DOT–E 13048	Department of Energy/ Richland Operations Office, Richland, WA.	49 CFR 173.244	To authorize the one-time, one-way transportation in commerce of a non-DOT specification containment system for waste disposal. (mode 1)
13052–N	DOT–E 13052	Questar, Inc., North Canton, OH.	49 CFR 172.301(a), 172.301(c), 172.400(a), 173.173(b)(2), 173.242.	To authorize the manufacture, marking, sale and use of UN 11G fiberboard intermediate bulk containers for use as the outer packaging for certain waste paints and waste paint related material, Class 3 in 5 gallon pails. (mode 1)
13056–N	DOT–E 13056	American Type Culture Collection (ATCC), Manassas, VA.	49 CFR 172, Subpart C, 173.134.	To authorize the transportation in commerce of certain infectious substances in special packagings. (mode 1)
13057–N	DOT–E 13057	MINTEQ International Inc., Easton, PA.	49 CFR 172 Subparts D, E & F, 173.24(c) Subparts E & F of Part 173.	To authorize the transportation in commerce of metal tubing containing hazardous materials to be transported with minimal regulation. (modes 1, 2, 3)
13083–N	DOT–E 13083	Rockwood Pigments NA, Inc., St. Louis, MO.	49 CFR 172,101 (SP IB6 or IP2).	To authorize the transportation in commerce of self-heating, solid, organic, n.o.s. in fexible intermediate bulk containers not to exceed 2,500 lbs. (modes 1, 2, 3)
13092–N	DOT–E 13092	Aztec Peroxides, L.L.C., Elyria, OH.	49 CFR 173.225(e)	To authorize the transportation in comerce of certain organic peroxides, Division 5.2 in DOT-Specification cargo tanks. (mode 1)
EMERGENCY EXEMPTIONS				
EE 8556–M ..	DOT–E 8556	Gardner Cryogenics, Lehigh Valley, PA.	49 CFR 173.318, 176.76(g)(1), 178.338.	Modification request to add reference to an additional flow diagram. (modes 1, 2)
EE 12955–M	DOT–E 12955	Air Cruisers	49 CFR 172.301(c), 173.219(b)(1).	Modification request to provide additional time for cylinders to be re-marked. (modes 1, 4, 5)
EE 12976–M	DOT–E 12976	University of Pittsburgh, Pittsburgh, PA.	49 CFR 172.302(c), 173.196.	Modification request to provide an additional 90 days due to construction delays. (mode 1)
EE 13014–M	DOT–E 13014	Acambis Inc., Cambridge, MA.	49 CFR 173.196, 178.609	Modification request to provide additional time to transport smallpox vaccine due to technical delays. (mode 1)
EE 13032–N	DOT–E 13032	Conax Florida Corp. 2, St. Petersburg, FL.	49 CFR 178.65	To authorize the transportation in commerce of a DOT cylinder as part of a component for a vehicle that is part of the National Missile Defense Program. (mode 1)
EE 13036–N	DOT–E 13036	Datum, Beverly, MA	49 CFR 173.34(d)	To authorize the transportation in commerce of a non-DOT specification container for hydrogen. (mode 1)
EE 13042–M	DOT–E 13042	Department of State, Washington, DC.	49 CFR 172.101, Table Column 8C.	Emergency modification request to authorize Tyvek bags as inner packaging for transportation of anthrax contaminated objects. (mode 1)
EE 13065–N	DOT–E 13065	ShipMate, Inc., Torrance, CA.	49 CFR 173.166(c)	Emergency request to authorize the transportation of air bag modules and seat-belt pretensioners using an abbreviated EX number (*i.e.,* the last two digits of the year rather than using a four digit number to identify the year). (mode 1, 2, 3, 4, 5)
EE 13065–M	DOT–E 13065	Toyota Motor Sales	49 CFR 173.166(c)	Emergency request to authorize the transportation of air bag modules and seat-belt pretensioners using an abbreviated EX number (*i.e.,* the last two digits of the year rather than using a four digit number to identify the year). (mode 1, 2, 3, 4, 5)
EE 13067–N	DOT–E 13067	Kuehne Chemical Company, South Kearney, NJ.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency ''B'' kit to prevent leakage during transportation. (mode 1)
EE 13068–N	DOT–E 13068	Brenntag Mid-South Inc., Springfield, MO.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking multi-unit tank car tank that has been fitted with an emergency ''B'' kit to prevent leakage during transportation. (mode 1)

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 13071–N	DOT–E 13071	JCI Jones Chemcials, Inc., Charlotte, NC.	49 CFR 173. 49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency ''B'' kit prevent leakage (mode 1)
EE13072–N ..	DOT–E 13072	JCI Jones Chemicals, Inc., Beech Grove, IN.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT multi-unit tank car tank that has been fitt4ed with an emergency ''B'' kit to prevent leakage during transportation. (mode 1)
EE13073–N ..	DOT–E 13073	Alcohol, Tobacco & Firearms, Washington, DC.	49 CFR 173,56(b), 173.62	Emergency request to transport 35 grams of unapproved explosives to an ATF laboratory. (mode 1)
EE13074–N ..	DOT–E 13074	Harcross Chemicals Inc., Kansas City, KS.	49 CFR 173.34(d)	Emergency request to transport a DOT3A480 cylinder containing chlorine that has developed a leak and has a Chlorine Institute A Kit applied. (mode 1)
EE13075–N ..	DOT–E 13075	Alexander Chemical Corp., LaPorte, IN.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency ''B'' kit to prevent leakage during transportation. (mode 1)
EE13079–N ..	DOT–E 13079	Atofina Chemicals, Inc., Philadelphia, PA.	49 CFR 172.400	To authorize the transportation in commerce for a one-time shipment of class 9 materials that have been mis-labeled as class 3 flammables. (mode 1)
EE13086–N ..	DOT–E 13086	Alexander Chemical Corporation, LaPorte, IN.	49 CFR 173.34(d)	Emergency request to transport a DOT3AA480 cylinder containing chlorine which has developed a leak and is fitting with a Chlorine Institute A Kit. (mode 1)
EE13089–N ..	DOT–E 13089	Harcross Chemicals, Inc., Kansas City, KS.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT 3A480 cylinder containing chlorine that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE13090–N ..	DOT–E 13090	JCI Jones Chemicals Inc., Caledonia, NY.	49 CFR 173.301(c), 173.34(d).	To authorize the transportation in commerce of a leaking DOT3A480 cylinder containing chlorine which has an emergency ''A'' kit applied to prevent leakage during transportation. (mode 1)
EE13093–N ..	DOT–E 13093	Kuehne Chemical Company, South Kearny, NJ.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency ''B'' kit to prevent leakage during transportation. (mode 1)
EE13094–N ..	DOT–E 13094	Airgas Nor Pac, Seattle, WA.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency ''B'' kit to prevent leakage during transportation. (mode 1)
EE13095–N ..	DOT–E 13095	Ocean Drilling Program, College Station, TX.	49 CFR 173.302, 175.3 ...	Emergency request to transport certain non-DOT specification hydraulic accumulators containing methane. (mode 1)
EE 13096–N	DOT–E 13096	Hacros Chemicals Inc., Kansas City, KS.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT 3A480 specification cylinder containing chlorine that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13097–N	DOT–E 13097	Alexander Chemical Corporation, LaPorte, IN.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT 3AA480 specification cylinder containing chlorine that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13098–N	DOT–E 13098	JCI Jones Chemicals, Inc., Caledonia, NY.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to transport a DOT 106A500 specification multi unit tank car tank containing chlorine that has developed a task and has a chlorine Institute B kit applied. (mode 1)
EE 13099–N	DOT–E 13101	The Colibri Corporation, Providence, RI.	49 CFR 172.301(a), 172.301(c), 178.3, 178.33a–9.	Emergency request to authorize the transportation in commerce of receptable containing flammable gas that are not marked with a specification, and are mis-marked with the proper shipping name and identification number. (mode 1)
EE 13102–N	DOT–E 13102	Watts Regulator Company, North Andover, MA.	49 CFR 173.150(b), 173.222(c), 173.306(a), 173.322.	Emergency request to transport non-DOT specification packagings, with limited quantities of various hazardous materials. (modes 1, 2, 4)
EE 13103–N	DOT–E 13103	JCI Jones Chemicals Inc., Milford, VA.	49 CFR 172, Subparts C&G, 172.301(c), 173.34(d).	Emergency request to transport a DOT Specification 3A480 cylinder containing chlorine that has developed a leak and is equipped with a Chlorine Institute A kit. (mode 1)
EE 13113–N	DOT–E 13113	Dow Chemicals, Inc., Kansas City, KS.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to transport a DOT Specification 106A500 multi unit tank car tank containing chlorine which developed a leak in the valve and has a Chlorine Institute B kit applied. (mode 1)

Application number	Exemption number	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 13113–N	DOT–E 13113	Dow AgroSciences L.L.C., Indianapolis, IN.	49 CFR 172.302, 173.243(b) and (c).	To authorize the transportation in commerce of a division 6.1 material in DOT specification cargo tanks that are not authorized for that material in the HMR. (mode 1)
EE 13115–N	DOT–E 13115	Airgas Northeast, Cheshire, CT.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 4BW240 cylinder containing sulfur dioxide which developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13119–N	DOT–E 13119	JCI Jones Chemicals Inc., Cadedonia, NY.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing sulfur dioxide that has developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13120–N	DOT–E 13120	JCI Jones Chemicals, Charlotte, NC.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking DOT specification multi-unit tank car tank that has been fitted with an emergency ''B'' kit to prevent leaking during transportation. (mode 1)
EE 13121–N	DOT–E 13121	Airgas, Corpus Christi, TX	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing chlorine that developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13122–N	DOT–E 13122	DPC Enterprises, Houston, TX.	49 CFR 172.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	Emergency request to transport a DOT specification 106A500X multi unit tank car tank containing sulfur dioxide that developed a leak and has a Chlorine Institute B kit applied. (mode 1)
EE 13123–N	DOT–E 13123	DPC Enterprises, Houston, TX.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing chlorine that developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13125–N	DOT–E 13125	Allied Universal Corporation, Miami, FL.	49 CFR 173.302(c), 179.300–12(b), 179.300–13(a), 179.300–14.	To authorize the transportation in commerce of a leaking ton cylinder that has been fitted with an emergency ''B'' kit to prevent leakage during transportation. (mode 1)
EE 13126–N	DOT–E 13126	Univar USA Inc., Twinsburg, OH.	49 CFR 172.301(c), 173.34(d).	Emergency request to transport a DOT specification 3A480 cylinder containing sulfur dioxide that developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13128–N	DOT–E 13128	Alexander Chemical Co., LaPorte, IN.	49 CFR 173.34(d)	To authorize the transportation in commerce of a leaking cylinder that has been fitted with an emergency ''A'' kit to prevent leakage during transportation. (mode 1)
EE 13130–N	DOT–E 13130	DPC Enterprises, Houston, TX.	49 CFR 173.34(d)	To authorize the transportation in commerce of a leaking cylinder that has been fitted with an emergency ''A'' kit to prevent leakage during transportation. (mode 1)
EE 13131–N	DOT–E 13131	Airgas-Nor Pac, Inc., Portland, OR.	49 CFR 173.34(d)	To authorize the transportation in commerce of a leaking cylinder that has been fitted with an emergency ''A'' kit to prevent leakage during transportation. (mode 1)

DENIALS

10440–M	Request by MASS Systems (A Unit of Ameron Global, Inc.) Baldwin Park, CA to modify the exemption to authorize an alternative maintenance/inspection program for welded austenitic stainless steel non-DOT specification cylinders, conforming with DOT Specification 4DS, for the transportation of Division 2.2 materials denied September 27, 2002.
11759–M	Request by E.I DuPont de Nemours & Company, Inc. Wilmington, DE to modify the exemption to authorize the transportation of a Division 6.1 material in DOT Specification tank cars denied August 6, 2002.
12820–N	Request by Trinity Manufacturing Hamlet, NC to authorize the transportation in commerce of chloropicrin, 6.1, poison inhalation hazard, Hazard Zone B and chloropicrin mixtures in 1A1 drums in an alternative stacking position denied July 16, 2002.
12845–N	Request by Qantas Airways Limited Los Angeles, CA to authorize the transportation in commerce of cylinders containing medical use compressed oxygen that exceed the present quantity limitation denied September 27, 2002.
13024–N	Request by Sybron Dental Specialties Inc. Orange, CA to authorize the transportation in commerce of specially designed packagings containing metallic mercury, Class 8 in package quantities exceeding one pound with the prescribed marking and labelling denied September 25, 2002.

[FR Doc. 03–187 Filed 1–3–03; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: R. Ryan Posten, Exemptions Program Officer Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
PM—Party to application with modification request.

Issued in Washington, DC, on December 20, 2002.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	03/31/2003
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	01/31/2003
12381–N	Ideal Chemical & Supply Co., Memphis, TN	3	05/31/2003
12412–N	Great Western Chemical Company, Portland, OR	3	05/31/2003
12440–N	Luxfer Inc., Riverside, CA	1	05/31/2003
12648–N	Stress Engineering Services, Inc., Houston, TX	4	02/28/2003
12701–N	Fuel Cell Components & Integrators, Inc., Hauppauge, NY	1	01/31/2003
12706–N	Raufoss Composites AS, Raufoss, NO	1, 3	03/31/2003
12715–N	Arkansas Eastman Division, Eastman Chemical Co., Batesville, AR	4	01/31/2003
12718–N	Weldship Corporation, Bethlehem, PA	4	01/31/2003
12751–N	Defense Technology Corporation, Casper, WY	4	01/31/2003
12859–N	Atlantic Research Corporation, Gainesville, VA	4	03/31/2003
12867–N	G.L.I. Citergaz, 964 Civray, FR	1	03/31/2003
12902–N	C&S Railroad Corp., Jim Thorpe, PA	4	01/31/2003
12941–N	The Neiman Marcus Group, Longview, TX	4	01/31/2003
12950–N	Walnut Industries, Inc., Bensalem, PA	4	01/31/2003
12960–N	International Fuel Cells, South Windsor, CT	4	03/31/2003
12973–N	Viking Packing Specialist, Tulsa, OK	4	03/31/2003
12988–N	Air Products & Chemicals, Inc., Allentown, PA	1	05/31/2003
12990–N	Technifab Products, Inc., Brazil, IN	4	01/31/2003
12991–N	General Plastics Manufacturing Company, Tacoma, WA	4	01/31/2003
12998–N	Safety-Kleen Services, Inc., Columbia, SC	4	01/31/2003
12999–N	Safety-Kleen Services, Inc., Columbia, SC	4	01/31/2003
13001–N	The J.C. Smith Co., San Saba, TX	1	03/31/2003
4453–M	Dyno Nobel, Inc., Salt Lake City, UT	4	12/31/2002
4884–M	Matheson Tri-Gas, East Rutherford, NJ	4	01/31/2003
7060–M	Federal Express, Memphis, TN	4	01/31/2003
7277–M	Structural Composites Industries, Pomona, CA	3	02/28/2003
8162–M	Structural Composites Industries, Pomona, CA	3	02/28/2003
8718–M	Structural Composites Industries, Pomona, CA	3	02/28/2003
8723–M	Dyno Nobel, Inc., Salt Lake City, UT	1	01/31/2003
10019–M	Structural Composites Industries, Pomona, CA	3,4	02/28/2003
10751–M	Dyno Nobel, Inc., Salt Lake City, UT	4	01/31/2003
10882–M	Espar Products, Inc., Mississauga, Ontario L5T 1Z8, CN	4	01/31/2003
11194–M	Carleton Technologies Inc., Pressure Technology Div., Glen Burnie, MD	4	01/31/2003
11327–M	Phoenix Services, Inc., Pasadena, MD	4	03/31/2003
11537–M	JCI Jones Chemicals, Inc., Milford, VA	3	05/31/2003
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	1	01/31/2003
11769–M	Great Western Chemical Company, Portland, OR	3	03/31/2003
11769–M	Great Western Chemical Company, Portland, OR	3	03/31/2003
11769–M	Hydrite Chemical Company, Brookfield, WI	3	03/31/2003
11791–M	The Coleman Company, Inc., Wichita, KS	4	01/31/2003
11850–M	Air Transport Association, Washington, DC	4	01/31/2003
11911–M	Transfer Flow, Inc., Chico, CA	3	05/31/2003
11911–M	Transfer Flow, Inc., Chico, CA	3	05/31/2003
12065–M	Petrolab Company, Latham, NY	4	05/31/2003
12443–M	Dow Reichhold Specialty Latex, LLC, Chickamauga, GA	4	01/31/2003
12449–M	Chlorine Service Company, Inc., Kingwood, TX	4	01/31/2003

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
12599–M	Voltaix, Inc., North Branch, NJ	4	01/31/2003
12866–M	Delta Air Lines (Technical Operations Center), Atlanta, GA	4	01/31/2003

[FR Doc. 03–186 Filed 1–3–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Berkley Regional Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6915.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44301 to reflect this addition:

Company Name: Berkley Regional Insurance Company. *Business Address:* 7273 East Butherus Drive, Scottsdale, AZ 85260. *Phone:* (203) 629–3000. *Underwriting Limitation b/:* $16,283,000. *Surety Licenses c/:* AL, AK, AZ, AR, CA, CT, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. *Incorporated in:* Delaware.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: December 24, 2002.

Wanda Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–117 Filed 1–3–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Ohio Indemnity Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 Revision, on page 44322 to reflect this addition:

Ohio Indemnity Company. *Business Address:* 250 East Broad Street, 10th Floor, Columbus, OH 43215. *Phone:* (614) 228–2000. *Underwriting Limitation b/:* $2,963,000. *Surety Licenses c/:* AL, AZ, AR, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, ME, MD, MI, MS, MO, MT, NE, NV, NH, NJ, NY, NC, ND, OH, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI, WY. *Incorporated in:* Ohio.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: December 24, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 03–116 Filed 1–3–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8885

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8885,

Health Insurance Credit For Eligible Recipients.

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Credit For Eligible Recipients.

OMB Number: 1545–1807.

Form Number: 8885.

Abstract: Form 8885 is used to allow a qualifying individual to take a credit for health insurance premiums paid either by them or their behalf on their tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300,000.

Estimated Time Per Response: 59 minutes.

Estimated Total Annual Burden Hours: 294,000.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–202 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8880

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8880, Credit for Qualified Retirement Savings Contributions.

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Qualified Retirement Savings Contributions.

OMB Number: 1545–1805.

Form Number: Form 8880 is used to allow qualifying taxpayers to take a nonrefundable credit for contributions made to their qualified retirement accounts. These accounts can be IRA's, Roth IRA's, or qualified employer sponsored retirement plans.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 1 hour, 19 minutes.

Estimated Total Annual Burden Hours: 1,310,000.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–203 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 96–53

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–53, Section 482—Allocations Between Related Parties.

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sec. 482—Allocations Between Related Parties.

OMB Number: 1545–1503. Revenue Procedure Number: Revenue Procedure 96–53.

Abstract: The information requested in this revenue procedure is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with the agreements and whether the agreements require modification.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time Per Respondent: 32 hours, 49 minutes.

Estimated Total Annual Burden Hours: 5,250.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–204 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Revenue Procedure 96–52

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 96–52, Acceptance Agents (IRB 1996–48).

DATES: Written comments should be received on or before March 7, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or revenue procedure should be directed to Larnice Mack, (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Acceptance Agents.

OMB Number: 1545–1499.

Revenue Procedure Number: Revenue Procedures 96–52.

Abstract: Revenue Procedure 96–52 describes application procedures for becoming an acceptance agent and the requisite agreement that an agent must execute with the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 12,825

Estimated Time Per Respondent: 3 hrs., 12 minutes.

Estimated Total Annual Burden Hours: 41,006.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 03–205 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, February 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, February 13, 2003, from 2 p.m. central time to 3 p.m. central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 03–199 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, February 5, 2003, from 11 a.m. central time to noon central time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 03–200 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, February 7, 2003, from 1 to 4 p.m., and Saturday, February 8, 2003, from 8 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Friday, February 7, 2003, from 1 to 4 p.m., and Saturday, February 8, 2003, from 8 a.m. to noon at the Courtyard Overland Park, Metcalf, 11301 Metcalf Avenue, Overland Park, KS 66210. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: December 19, 2002.

Maryclare Whitehead,

Executive Assistant to the National Taxpayer Advocate.

[FR Doc. 03–201 Filed 1–3–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 3

Monday, January 6, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2002–8]

Brokerage Loans and Lines of Credit

Correction

In rule document 02–13689 beginning on page 38353 in the issue of Tuesday, June 4, 2002 make the following correction:

§ 104.3 [Corrected]

On page 38360, in the second column, in §104.3 (a)(3)(vii)(A), in the first paragraph, in the first line, ''(A)'' should read, ''(B)''.

[FR Doc. C2–13689 Filed 1–3–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,

January 6, 2003

Part II

Environmental Protection Agency

40 CFR Part 50

National Ambient Air Quality Standards for Ozone: Final Response to Remand; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–7428–7]

RIN 2060–ZA11

National Ambient Air Quality Standards for Ozone: Final Response to Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final response to remand.

SUMMARY: On July 18, 1997, in accordance with sections 108 and 109 of the Clean Air Act (Act), EPA completed its review of the national ambient air quality standards (NAAQS) for ozone (O_3) by promulgating revised primary and secondary standards (62 FR 38856; henceforth, ''1997 final rule''). On May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') remanded the O_3 NAAQS to EPA to consider, among other things, any potential beneficial health effects of O_3 pollution in shielding the public from the ''harmful effects of the sun's ultraviolet rays.'' 175 F.3d 1027 (D.C. Cir., 1999). Today's action provides EPA's final response to that aspect of the Court's remand. Based on its review of the air quality criteria and NAAQS for O_3 completed in 1997, its additional assessment of potential beneficial effects of tropospheric O_3, and taking into account public comments, EPA has determined that information linking (a) changes in patterns of ground-level O_3 concentrations likely to occur as a result of programs implemented to attain the 1997 O_3 NAAQS to (b) changes in relevant patterns of exposures to ultraviolet (UV–B) radiation of concern to public health is too uncertain at this time to warrant any relaxation in the level of public health protection previously determined to be requisite to protect against demonstrated direct adverse respiratory effects of exposure to O_3 in the ambient air. Further, it is the Agency's view that associated changes in UV–B radiation exposures of concern, using plausible but highly uncertain assumptions about likely changes in patterns of ground-level ozone concentrations, would likely be very small from a public health perspective. As a result, the revised O_3 NAAQS will remain set at a level of 0.08 parts per million (ppm), with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area. No other issues related to the 1997 O_3 NAAQS remain before the Court, and other remanded issues related to implementation of the O_3 NAAQS are not addressed by today's action.

EFFECTIVE DATE: March 7, 2003.

ADDRESSES: A docket containing information relating to EPA's review of the O_3 primary and secondary standards and this response to the D.C. Circuit remand (Docket No. A–95–58) is available for public inspection at the EPA's Air Docket Center, 1301 Constitution Avenue, N.W., Room B108, Washington, DC 20460, Mail code 6102T. This docket incorporates the docket from the previous review of the O_3 standards (Docket No. A–92–17) and the docket established for the ozone air quality criteria document (Docket No. ECAO–CD–92–0786). The docket may be inspected between 8:30 a.m. and 4:30 p.m. on weekdays, excluding legal holidays. A reasonable fee may be charged for copying. The information in the docket constitutes the complete basis for the decision announced in this final response to the remand. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Lyon Stone, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C539–01), Research Triangle Park, NC 27711; e-mail *stone.susan@epa.gov;* telephone (919) 541–1146.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

Certain documents are available from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Available documents include:

(1) The Review of the National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information (''Staff Paper'') (EPA–452/R–96–007, June 1996, NTIS # PB–96–203435; $67.00 paper copy and $21.50 microfiche). (Add a $3.00 handling charge per order).

(2) Air Quality Criteria for Ozone and Other Photochemical Oxidants (''Criteria Document'') (three volumes, EPA/600/P–93–004aF through EPA/600/P–93–004cF, July 1996, NTIS # PB–96–185574; $169.50 paper copy and $58.00 microfiche).

A limited number of copies of other documents generated in connection with the review of the standard, such as documents pertaining to human exposure and health risk assessments and the relationships between ground-level O_3, UV–B radiation, and health effects, can be obtained from: U.S. Environmental Protection Agency Library (C267–01), Research Triangle Park, NC 27711; telephone (919) 541–2777. These and other related documents are also available for inspection and copying in the EPA docket.

Electronic Availability

The Staff Paper and documents pertaining to human health risk and exposure assessments are available on the Office of Air and Radiation, Policy and Guidance Web site at: *http://www.epa.gov/ttn/oarpg/t1sp.html.* The O_3 NAAQS 1996 proposal and 1997 final rule are available at the same Web site, at: *http://www.epa.gov/ttn/oarpg/t1pfpr.html.*

Children's Environmental Health

This final response to the Court's remand, reaffirming the 1997 8-hour O_3 NAAQS, specifically takes into account children as the group most at risk to the direct inhalation-related effects of O_3 exposure, and was based on studies of effects on children's health (U.S. EPA, 1996a; U.S. EPA, 1996b) and assessments of children's exposure and risk (Johnson, 1994; Johnson *et al.,* 1996 a,b; Whitfield *et al.,* 1996; Richmond, 1997). The 8-hour O_3 primary standard protects children's health with an adequate margin of safety from the direct adverse effects associated with inhalation exposures to ground-level O_3, after considering potential indirect beneficial effects of ground-level O_3 related to its attenuation of UV–B radiation and any associated adverse health effects.

Implementation Activities

When the 8-hour primary and secondary O_3 standards are implemented by the States, the power generation, automobile, petroleum, and chemical industries are likely to be affected, as well as other manufacturing concerns that emit volatile organic compounds (VOC) or nitrogen oxides (NO_X). The extent of such effects will depend on implementation policies and control strategies adopted by States to assure attainment and maintenance of the standards.

The EPA is now developing appropriate policies and control strategies to assist States in the implementation of the 8-hour primary and secondary O_3 NAAQS. The EPA now expects to propose an implementation strategy for public comment early in 2003.

Table of Contents

The following topics are discussed in today's preamble:

I. Background

A. 1997 Revision of the O_3 NAAQS

On July 18, 1997, in accordance with sections 108 and 109 of the Act, EPA completed its review of the NAAQS for O_3 by promulgating revised primary and secondary standards (1997 final rule). These standards were based on EPA's review of the available scientific evidence linking direct exposures to ambient O_3 to adverse health and welfare effects at levels allowed by the then current O_3 standards. The revised primary and secondary standards were each set at a level of 0.08 ppm, with an 8-hour averaging time and a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area.[1] The new primary standard was established to provide increased protection to the public, especially children and other at-risk populations, against a wide range of O_3-induced respiratory health effects due to inhalation exposures, including decreased lung function, primarily in children active outdoors; increased respiratory symptoms, particularly in highly sensitive individuals; hospital admissions and emergency room visits for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma; inflammation of the lung; and possible long-term damage to the lungs. The new secondary standard was established to provide increased protection to the public welfare against direct O_3-induced effects on vegetation, such as agricultural crop loss, damage to forests and ecosystems, and visible foliar injury to sensitive species.

1. Legislative Requirements

Two sections of the Act govern the establishment, review, and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify certain pollutants which ''may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.''

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which, in the judgment of the Administrator, based on [the] criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' A secondary standard, as defined in section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on [the] criteria, [are] requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.'' [2]

Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria and NAAQS. Section 109(d)(2) requires appointment of an independent scientific review committee to review criteria and standards and recommend new standards or revisions of existing criteria and standards, as appropriate. The committee established under section 109(d)(2) is known as the Clean Air Scientific Advisory Committee (CASAC), a standing committee of EPA's Science Advisory Board.

2. Review of Air Quality Criteria and Standards for O_3

An overview of the last review of the O_3 air quality criteria and standards is presented in section I.C of the preamble to the 1997 final rule. In summary, the 1997 review was initiated in August 1992 with the development of a revised Air Quality Criteria Document for Ozone and Other Photochemical Oxidants (henceforth, the ''Criteria Document''). Multiple drafts of the Criteria Document were reviewed by CASAC and the public, resulting in a final Criteria Document (U.S. EPA, 1996a) that reflected CASAC and public comments.[3] The EPA also prepared a staff paper, Review of National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information (henceforth, the ''Staff Paper'').[4] Multiple drafts of the Staff Paper were also reviewed by CASAC and the public, resulting in a final Staff Paper (U.S. EPA, 1996b) that reflected CASAC and public comments.[5]

On November 27, 1996 EPA announced its proposed decision to

[1] The form of a standard refers to the air quality statistic that is used to determine whether an area attains the standard.

[2] Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

[3] In a November 28, 1995 letter from the CASAC chair to the Administrator, CASAC advised that the final draft Criteria Document ''provides an adequate review of the available scientific data and relevant studies of ozone and related photochemical oxidants'' (Wolff, 1995a).

[4] The Staff Paper evaluates policy implications of the key studies and scientific information in the Criteria Document, identifies critical elements that EPA staff believes should be considered, and presents staff conclusions and recommendations of suggested options for the Administrator's consideration.

[5] In separate letters from the CASAC chair to the Administrator, CASAC advised that the primary standard and secondary standard sections of the final draft Staff Paper provide ''an adequate scientific basis for making regulatory decisions'' concerning the O_3 standards (Wolff, 1995b, 1996).

revise the NAAQS for O_3 (61 FR 65716, December 13, 1996; henceforth, ''1996 proposal''), as well as its proposed decision to revise the NAAQS for particulate matter (PM). To ensure the broadest possible public input on these proposals, EPA took extensive and unprecedented steps to facilitate the public comment process, including the establishment of a national toll-free telephone hotline and provisions for electronic submission of comments. The EPA also held several public hearings, participated in numerous meetings across the country, and held two national satellite telecasts to provide direct opportunities for public comment and to disseminate information to the public about the proposed standard revisions. As a result of this intensive effort to solicit public input, more than 50,000 comments were received on the proposed revisions to the O_3 NAAQS by the close of the public comment period on March 12, 1997.

The final rule, published on July 18, 1997, presented EPA's rationale for its final decision, and addressed the major issues raised in comments on the 1996 proposal. A comprehensive summary of all significant comments, along with EPA's response to such comments (U.S. EPA, 1997; henceforth, ''Response to Comments''), can be found in the docket for the 1997 rulemaking (Docket No. A–95–58).[6] The 1997 final rule presented EPA's decision to replace the existing 1-hour primary and secondary standards[7] (each set at a level of 0.12 ppm, with a 1-expected-exceedance form, averaged over 3 years[8] with 8-hour standards, each set at a level of 0.08 ppm, with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area (as determined by 40 CFR part 50, appendix I).

B. Ozone NAAQS Litigation and Remand

1. Litigation Summary

Following promulgation of the revised 8-hour O_3 NAAQS, numerous petitions for review of the standards were filed in the D.C. Circuit. *American Trucking Associations* v. *EPA,* No. 97–1441. Oral argument was held on December 17, 1998 and the Court rendered its opinion on May 14, 1999. *American Trucking Associations* v. *EPA* (''ATA I''), 175 F.3d 1027 (D.C. Cir., 1999). A divided panel found that section 109 of the Act, 42 U.S.C. § 7409, as interpreted by EPA in setting the revised O_3 (and PM) NAAQS, effected an unconstitutional delegation of legislative authority. *Id.* at 1033–1040. The Court remanded the O_3 standards with instructions that EPA should articulate an ''intelligible principle'' for determining the degree of residual risk to public health permissible in setting revised NAAQS. *Id.* In addition, the Court also directed that, in responding to the remand, EPA should consider the potential beneficial health effects of O_3 pollution in shielding the public from the ''harmful effects of the sun's ultraviolet rays.'' *Id.* at 1051–1053.

In 1999, EPA petitioned the D.C. Circuit for rehearing *en banc* on several aspects of that Court's decision in *ATA I.* Although the petition for rehearing was granted in part and denied in part, the Court declined to review its ruling with regard to the potential beneficial effects of O_3 pollution. *American Trucking Associations* v. *EPA* (''*ATA II*''), 195 F.3d 4, 10 (D.C. Cir., 1999). The Court did note, however, that it ''expressed[ed] no opinion, of course, upon the effect, if any, that studies showing the beneficial effects of tropospheric ozone * * * might have upon any ozone standards * * *'' *Id.*

On January 27, 2000, EPA petitioned the U.S. Supreme Court for *certiorari* on the constitutional issue and two other issues, but did not request review of the D.C. Circuit ruling regarding the potential beneficial health effects of O_3. The EPA's petition for *certiorari* was granted on May 22, 2000; oral argument was subsequently held on November 7, 2000; and an opinion was issued on February 27, 2001. *Whitman* v. *American Trucking Associations* (''*Whitman*''), 531 U.S. 457 (2001). The U.S. Supreme Court reversed the judgment of the D.C. Circuit on the constitutional issue, holding that section 109 of the Act does not delegate legislative power to the EPA in contravention of the Constitution, and remanded the case to the D.C. Circuit to consider challenges to the O_3 (and PM) NAAQS that had not been addressed by that Court's earlier decisions.

Oral argument was held on December 18, 2001, and on March 26, 2002, the D.C. Circuit issued its final decision finding the 1997 O_3 (and PM) NAAQS to be ''neither arbitrary nor capricious,'' and denied the remaining petitions for review. *American Trucking Associations* v. *EPA* (''*ATA III*''), 283 F.3d 355, (D.C. Cir. 2002). Thus, today's final response to the Court's 1999 remand regarding the potential beneficial health effects of O_3 constitutes EPA's final response to challenges to the 1997 O_3 NAAQS. Other remanded issues, relating to implementation of the O_3 NAAQS, are not addressed by today's action.

2. Remand on Health Benefits Issue

The D.C. Circuit's 1999 ruling concludes that ''EPA cannot ignore the possible health benefits of ozone.''[9] *ATA I,* 175 F.3d at 1033. According to the Court ''[p]etitioners presented evidence that, according to them, shows the health benefits of tropospheric ozone as a shield from the harmful effects of the sun's ultraviolet rays—including cataracts and both melanoma and non-melanoma skin cancer.'' *Id.* at 1051. In rejecting EPA's view that Congress did not intend it to consider potential indirect beneficial effects of tropospheric O_3 in shielding the public from potentially harmful, but naturally occurring, UV–B radiation from the sun, the Court concluded that ''legally * * * EPA must consider the positive identifiable effects of a pollutant's presence in the ambient air in formulating air quality criteria under section 108 and NAAQS under section 109.'' *Id.* at 1052. As a result, the Court directed EPA to ''determine whether * * * tropospheric ozone has a beneficent effect and, if so, then to assess ozone's net adverse health effect.'' *Id.* at 1053. Today's action sets forth EPA's final response in that regard.

C. Atmospheric Distribution of O_3 and UV–B Radiation

The focus of the 1997 review of the air quality criteria and standards for O_3 and related photochemical oxidants was on public health and welfare effects associated with direct exposure to ambient levels of O_3 in the lower troposphere, essentially at ground level. People are directly exposed to ground-level O_3 simply by breathing ambient air; similarly, plants are directly exposed through their respiratory processes. Ground-level O_3 is not emitted directly from mobile or stationary sources but, like other photochemical oxidants, commonly exists in the ambient air as an

[6] This docket incorporates by reference the docket from the previous O_3 NAAQS review (Docket No. A–92–17) and the docket established for the Criteria Document (Docket No. ECAO–CD–92–0876).

[7] These 1-hour O_3 standards were originally set in 1979 (44 FR 8202, February 8, 1979) and reaffirmed in 1993 (58 FR 13008, March 9, 1993).

[8] The 1-hour standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one, averaged over 3 years (as determined by 40 CFR part 50, appendix H).

[9] For the reasons discussed in the Response to Comments (U.S. EPA, 1997, pp. 128–135), EPA did not consider in the 1997 review adverse health effects that might be caused by the potential increase in UV–B radiation that could result from reductions in ground-level O_3 brought about by control programs implemented to attain a revised O_3 NAAQS.

atmospheric transformation product. Ground-level O_3 formation is the result of chemical reactions of VOC, NO_X, and oxygen in the presence of sunlight and generally at elevated temperatures. As a principal ingredient in photochemical smog, elevated episodic concentrations of ground-level O_3 typically occur in the summertime. High concentrations may be found in and downwind of major urban centers as well as across broad regions of elevated precursor emissions. A detailed discussion of atmospheric formation, ambient concentrations, and health and welfare effects associated with direct exposure to O_3 can be found in the Criteria Document and Staff Paper.

Naturally occurring O_3 is found in two sections of the earth's atmosphere, the stratosphere and the troposphere. The demarcation between these two layers varies between about 8 and 18 kilometers (km) above the earth's surface. As illustrated in Figure 1, depicting the vertical profile of O_3, most naturally occurring O_3 (> 90 percent) resides in the stratosphere, with the remaining O_3 (< 10 percent) in the troposphere. The band of O_3 between about 15 and 30 km is commonly known as the ''ozone layer.''

Man-made air pollution has significantly perturbed the natural distribution of O_3 in both layers. It is now widely accepted that emissions of long-lived chlorofluorocarbons (CFCs) and other compounds can deplete the natural O_3 layer in the stratosphere. And, as summarized above, much shorter lived emissions of VOC and NO_X can markedly increase ''smog'' O_3 in the lowest portion of the troposphere, which is termed the planetary boundary layer. This fluctuating planetary boundary or ''mixing'' layer of the troposphere can extend as high as 1 to 3 km above the ground. Assuming a fairly high summertime O_3 pollution reservoir of 65 parts per billion (ppb) in a typical 1 km mixing layer, Cupitt (1994) estimated that pollution would add less than 1 percent to the expected total vertical profile of tropospheric and stratospheric O_3 (*i.e.*, ''total column'' O_3) that would occur in the natural environment.

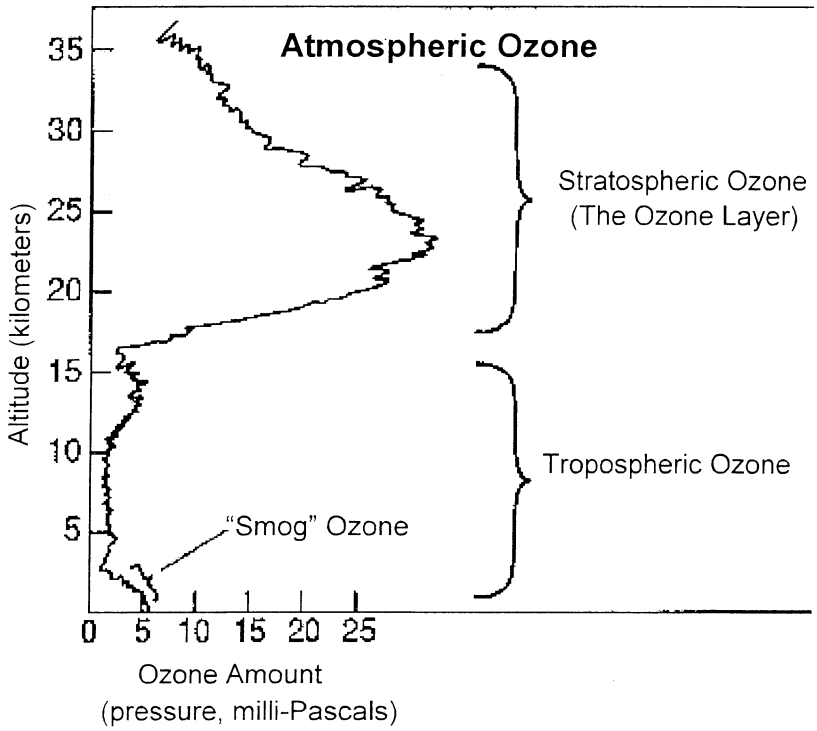

Figure 1. Distribution of Ozone in the Atmosphere (adapted from World Meteorological Organization, 1994, p. 20)

Ozone at ground level and throughout the troposphere is chemically identical to stratospheric O_3. Stratospheric O_3 occurs far too high to present any threat of direct respiratory-related adverse effects to people or plants from ambient ground-level exposures, but is known to provide a natural protective shield from excess radiation from the sun by absorbing UV–B radiation [10] before it penetrates to ground level. Recognizing that exposure to UV–B radiation has been associated with adverse health and welfare effects, EPA and international scientific, regulatory, and legislative organizations have for some time focused on understanding the effects of UV–B radiation and on controlling the man-made pollution that is causing the depletion of the O_3 layer in the stratosphere, as discussed in section I.D below.[11]

During the 1997 review, EPA recognized that tropospheric O_3 also absorbs UV–B radiation (U.S. EPA, 1996a, p. 5–79), such that ground-level O_3 formed by man-made pollution has the potential to provide some degree of additional shielding beyond the natural

[10] UV–B radiation refers to the region of the solar spectrum within the range of wavelengths generally from 280–290 nanometers (nm) at the lower end, to 315–320 nm at the upper end.

[11] For example, in 1977 and again in 1990, Congress added provisions to the Act to address stratospheric O_3 depletion and the resultant increase in exposure to UV–B radiation.

levels that would otherwise occur in the absence of man-made pollution. The relationship between ground-level O_3 and UV–B radiation, as well as the health effects associated with exposure to UV–B radiation and consideration of the UV–B radiation-related health risks associated with changes in ground-level O_3 are discussed in section II.B below. In response to the remand on the health benefits issue, EPA's assessment of the net adverse health effects of ground-level O_3 is discussed in section II.C below, as a basis for today's decision on the primary O_3 NAAQS, summarized in section II.D below.

D. Related Stratospheric O_3 Program

In the 1970s, scientists first grew concerned that certain chemicals could damage the earth's protective stratospheric O_3 layer, and these concerns were validated by the discovery of thinning of the O_3 layer over Antarctica in the southern hemisphere. Because of the risks posed by stratospheric O_3 depletion and the global nature of the problem, leaders from many countries decided to work together to craft a workable solution. Since 1987, over 175 nations have signed a landmark environmental treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer. The Protocol's chief aim is to reduce and eventually eliminate the production and use of man-made O_3 depleting substances, such as CFCs. By agreeing to the terms of the Montreal Protocol, signatory nations ratifying the Protocol—including the United States—commit to take actions to protect the stratospheric O_3 layer and to reverse the damage due to the use of O_3 depleting substances.

In 1990, Congress amended the Act by adding title VI (sections 601–618) to address the issue of stratospheric O_3 depletion.[12] Most importantly, the amended Act required the gradual end to the production of certain chemicals that deplete the O_3 layer.[13] In addition, the Act requires EPA to develop and implement regulations for the responsible management of O_3 depleting substances in the United States. The EPA has developed several regulatory programs under these authorities that include: ending the production and import of O_3 depleting substances (57 FR 33754, July 30, 1992) and identifying safe and effective alternatives (59 FR 13044, March 18, 1994), ensuring that refrigerants and halon fire extinguishing agents are recycled properly (58 FR 28660, May 14, 1993), banning the release of O_3 depleting refrigerants during the service, maintenance, and disposal of air conditioners and other refrigeration equipment (60 FR 40420, August 8, 1995), and requiring that manufacturers label products either containing or made with the most harmful O_3 depleting substances (58 FR 8136, February 11, 1993). Because of their relatively high O_3 depletion potential, several man-made compounds, including CFCs, carbon tetrachloride, methyl chloroform, and halons were targeted first for phaseout. The EPA continues to develop additional regulations for the protection of public health and the environment from effects associated with the depletion of the stratospheric O_3 layer.

Besides implementing and enforcing stratospheric O_3 protection regulations in the U.S., EPA continues to work with other U.S. government agencies and international governments to pursue ongoing changes to the Montreal Protocol and other treaties. These refinements to the Protocol and other treaties are based on ongoing scientific assessments of O_3 depletion that are coordinated by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO), with cooperation from EPA and other agencies around the globe (UNEP, 1998; and WMO, 1998).

In addition to these regulatory and scientific activities, EPA maintains several education and outreach projects to help protect the American public from the health effects of overexposure to ultraviolet (UV) radiation. Chief among these projects is the UV Index, a tool that provides a daily forecast of the next day's likely UV levels across the United States.[14] The UV Index, which EPA launched in partnership with the National Weather Service, serves as the cornerstone of EPA's SunWise School Program, the goal of which is to educate young children and their caregivers about the health effects of overexposure to the sun, as well as simple steps that people can take to avoid overexposure.[15]

E. Summary of Proposed Response to Remand

On November 14, 2001, EPA proposed a response to the D.C. Circuit remand (66 FR 52768; henceforth, ''proposed response'') to consider any potential beneficial effects of ground-level O_3 in shielding the public from potentially harmful, but naturally occurring, UV–B radiation from the sun. *ATA I,* 175 F.3d at 1051–53. Based on its review of the air quality criteria and NAAQS for O_3 completed in 1997, and its additional assessment of potential beneficial effects of ground-level O_3, EPA provisionally determined that the information linking (a) Changes in patterns of ground-level O_3 concentrations likely to occur as a result of programs implemented to attain the 1997 O_3 NAAQS to (b) changes in relevant patterns of exposure to UV–B radiation of concern to public health is too uncertain at this time to warrant any relaxation in the level of public health protection previously determined to be requisite to protect against the demonstrated adverse respiratory effects of direct inhalation exposure to O_3 in the ambient air.[16] Further, the proposed response presented the Agency's view that even when using plausible but highly uncertain assumptions about likely changes in patterns of ground-level O_3 concentrations, associated changes in UV–B radiation exposures of concern would likely be very small from a public health perspective. Thus, EPA proposed not to change the O_3 NAAQS set in 1997 at a level of 0.08 ppm, with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations measured at each monitor within an area.

The proposed response solicited public comments on EPA's proposed decision not to change the 1997 O_3 NAAQS, and on various specific aspects of EPA's review and rationale. The EPA received ten comments on the proposed response from industry, public interest groups, and local and State governments. Significant comments are addressed throughout section II below and more fully in a separate Response to Comments (U.S. EPA, 2002).

II. Rationale for Final Response To Remand on the Primary O_3 Standard

Today's action presents the Administrator's final response to the remand, in which the Court directed EPA to determine ozone's net adverse effect on public health and not

[12] Title VI replaced the provisions regarding stratospheric O_3 depletion enacted in 1977. 42 U.S.C. 7671.

[13] Both the Act and the Montreal Protocol, however, provide for limited ''essential use exemptions'' for the continued production and import of very small quantities of CFCs and other O_3 depleting substances needed for certain essential uses, for example, for metered dose inhalers used by people with asthma and other respiratory diseases.

[14] Information about the UV Index is available from the EPA Stratospheric Ozone Hotline at (800) 296–1996 or at *http://www.epa.gov/sunwise/uvindex.html.*

[15] Information about EPA's SunWise School Program is available at *http://www.epa.gov/sunwise/.*

[16] The D.C. Circuit upheld EPA's determination that the 1997 O_3 NAAQS was requisite to protect against demonstrated adverse respiratory effects in *ATA III.*

''disregard the studies'' upon which the petitioners primarily relied in their challenge. *ATA I,* 175 F.3d at 1053. Today's action reaffirms the 8-hour O_3 primary standard promulgated in 1997, based on:

(1) Information from the 1997 criteria and standards review that served as the basis for the 1997 primary O_3 standard, including the scientific information on health effects associated with direct inhalation exposures to O_3 in the ambient air, consideration of the adversity of such effects for individuals, and human exposure and risk assessments (section II.A below);

(2) A review of scientific information in the record of the 1997 review (but not considered as part of the basis for the 1997 standard) on potential health effects associated with changes in UV–B radiation, the association between changes in ground-level O_3 and potential changes in UV–B radiation, and predictions of changes in ground-level O_3 levels likely to result from attainment of alternative O_3 standards (section II.B below);

(3) Consideration of the net adverse effects of ground-level O_3, taking into account both direct adverse inhalation-related health effects and potential indirect beneficial health effects associated with the shielding of UV–B radiation by ground-level O_3 (section II.C below); and

(4) Consideration of the comments received on the proposed response.

A number of commenters focused on various aspects of EPA's decision-making process and the timing of EPA's final response. A few such commenters expressed the view that EPA's proposed response to the remand was procedurally inadequate in that in reviewing information in the record on ozone's potential beneficial effects, EPA did not supplement the air quality criteria or consult with CASAC. These commenters also asserted that EPA should reopen the record to include new studies and analyses regarding ozone's potential beneficial effects that were not available for inclusion in the 1997 rulemaking record. These commenters thus argued that EPA should supplement the air quality criteria with information on ozone's potential beneficial effects, including both new and record information, consult with CASAC, and re-propose a response to the remand.[17]

Other commenters expressed the opposite view, agreeing with EPA's reliance on the rulemaking record that was before the Court in the *ATA* litigation as the basis for EPA's proposed response, and urging EPA to conclude its response as expeditiously as possible. These commenters argued that to reopen the record would require consideration not only of new information on potential beneficial effects, but also new information on adverse respiratory effects, and that to do so would effectively erase the previous review cycle. These commenters also asserted that the analyses of ozone's potential beneficial effects that were included in the record fail to meet minimum standards of reliability and scientific adequacy, that failure by EPA to expeditiously conclude the review that began in 1992 would represent unreasonable delay, and that any associated delay in implementing the 1997 O_3 NAAQS would be at the expense of public health.

Having considered these procedural comments, EPA continues to believe it is appropriate to base its response to the remand on the large amount of relevant information in the 1997 rulemaking record that was before the Court in *ATA I,* taking into account as well the substantive comments received on the proposed response. The EPA also believes it is unnecessary to supplement the air quality criteria with the draft, preliminary analyses relied on by commenters and by some petitioners in the *ATA I* litigation, or to undertake a more formal CASAC review. As more fully discussed in the Response to Comments, EPA took note of the following in reaching these conclusions:

(1) This action responds to a remand from the D.C. Circuit and addresses the only remaining issue regarding the setting of the 1997 O_3 standard.[18] It is not a new, separate review of air quality criteria and NAAQS under sections 108 and 109. In these circumstances, it is appropriate for EPA to base its response on the record associated with the prior NAAQS review and court decisions. The EPA recognizes that new studies and related information relevant to further assessment of ozone's net adverse effects may now be available that were not part of the 1997 rulemaking record.

Such information is likely available not only on indirect potentially beneficial effects of O_3, but also on direct adverse respiratory-related effects of O_3. Taking into account the 5-year periodic review requirements of section 109 of the Act, and noting that this review already extended a decade since it was initiated (57 FR 38832; August 27, 1992), EPA believes that any such new information should be considered in the next periodic review. The EPA has already initiated the next periodic review. Preparation of a revised O_3 Criteria Document that will incorporate all such relevant information is well underway (65 FR 57810; September 26, 2000).

(2) Limiting its consideration to information that was part of the 1997 record, as well as comments on the proposed response, is consistent with EPA's prior exercise of its discretion to decide whether new studies or analyses cited during a public comment period are of such potential significance that a final decision should be postponed so they can be assessed in supplemental air quality criteria and considered before concluding a NAAQS review. *See* 58 FR 12008, 13014 n.2 (1993) (ozone NAAQS). In prior reviews, after an extended review of relevant scientific information, EPA has been aware of yet additional relevant information, but determined that the information would be more appropriately considered in its next periodic review.[19] *See, e.g.,* 62 FR 38652, 38662 (1997) (PM NAAQS).

(3) The record includes relevant information on indirect potentially beneficial effects of O_3. The public has been afforded two opportunities to submit comments and relevant information on this issue, through EPA's solicitation of public comments on both the 1996 proposal and the 2001 proposed response.

(4) The documents in the 1997 record cited by some commenters—and upon which certain petitioners primarily relied in their challenge of EPA's 1997 decision—(Cupitt, 1994; DOE, 1995; Lutter and Wolz, 1997) do not generally meet the minimum standards that EPA and CASAC have historically maintained for inclusion of health-related information in air quality criteria. The documents in question are either draft, unpublished analyses or, in the case of the one paper that was published, characterized by the authors as a ''preliminary analysis,'' which generally relied upon the assumptions in the other unpublished analyses. Consistent with its practice in other NAAQS reviews, the EPA judges these

[17] Some commenters also expressed the view that EPA's proposed response to the remand was premature since the D.C. Circuit had not yet decided other related issues. These comments are now moot since the D.C. Circuit issued its final opinion on March 26, 2002, denying all remaining challenges to the 1997 O_3 NAAQS.

[18] As noted earlier, this action does not address implementation of the O_3 NAAQS.

[19] As in other instances where EPA has received additional studies during public comment, EPA provisionally examined a 1997 draft analysis conducted by Madronich and determined that it did not warrant supplementing the air quality criteria at this time. *See, e.g.,* 62 FR 38652, 38662 (1997) (PM NAAQS).

draft, unpublished or preliminary analyses to be inappropriate for inclusion in air quality criteria, and concludes that supplementing the 1996 O_3 criteria is not warranted.

(5) As discussed in more detail in section II.B.2, EPA also determined that it was not in a position to supplement the air quality criteria by developing its own more extensive analysis because information essential to the development of such an analysis (*e.g.,* behavioral patterns related to potential UV–B radiation exposure) is not available at this time.

(6) The EPA has appropriately consulted CASAC by providing for its review and comment the proposed response, as well as the key documents from the record upon which EPA's response is based.[20] The CASAC has expressed no concern with this procedure nor indicated that any further CASAC involvement was necessary or appropriate. Indeed, only one member of CASAC chose to comment at all, and that member likewise expressed no concern with the method by which EPA consulted with CASAC on the response to the remand. Finally, the commenters have not provided any reason to believe that additional review by CASAC would have affected the outcome of this action in any way.

In view of the above factors, in particular the quality and type of analyses relied on by commenters and the fact that CASAC had the opportunity to review those analyses as well as other information in the record, EPA believes its approach to this response represents a reasonable exercise of its discretion to decide when to supplement the review process and fulfills the Agency's responsibilities under the Act. The EPA's response fully complies with the direction of the Court that EPA determine ozone's net adverse effect on public health and not ''disregard the studies'' upon which the petitioners primarily relied in their challenge. *ATA I,* 175 F.3d at 1053. Nothing in the Court's remand purports to require EPA to reopen the air quality criteria, or indeed the entire review process, before concluding this aspect of the 1997 review. For the reasons discussed above, EPA also believes it would be inappropriate to do so.

Accordingly, the EPA concludes that any further extension of this review, through reopening the rulemaking record or review process, would represent an unwarranted delay in completing this review cycle, which began in 1992 and originally concluded in 1997. Any further extension of this review would also delay Agency and State actions to implement the 8-hour O_3 NAAQS, which EPA believes would be inappropriate and contrary to the purpose of the Act, in that it would impede the important public health protections afforded by the 8-hour ozone NAAQS.

A. Direct Adverse Health Effects From Breathing O_3 in the Ambient Air

This section briefly summarizes information on the direct adverse health effects from breathing O_3 in the ambient air, information as to when those effects become adverse to individuals, and insights gained from human exposure and risk assessments intended to provide a broader perspective for judgments about protecting public health from the risks associated with direct O_3 inhalation exposures.[21]

1. Health Effects Associated With O_3 Inhalation Exposures

Based on information from human clinical, epidemiological, and animal toxicological studies, an array of health effects has been attributed to short-term (1 to 3 hours), prolonged (6 to 8 hours), and long-term (months to years) exposures to O_3. Long-established acute health effects[22] induced by short-term exposures to O_3, generally while individuals were engaged in heavy exertion, include transient pulmonary function responses, transient respiratory symptoms, and effects on exercise performance.[23] The 1997 review included substantial new information on similar effects associated with prolonged exposures at concentrations as low as 0.08 ppm and at moderate levels of exertion. Other health effects associated with short-term or prolonged O_3 exposures include increased airway responsiveness, susceptibility to respiratory infection, increased hospital admissions and emergency room visits, and transient pulmonary inflammation. The 1997 review also included new information on chronic health effects[24] associated with long-term exposures. This array of effects is briefly summarized below, followed by considerations as to when these physiological effects could become medically significant such that they should be regarded as adverse to the health of individuals experiencing them.

a. Effects of Short-term and Prolonged O_3 Exposures

(i) Pulmonary function responses. Transient reductions in pulmonary function have been observed in healthy individuals and those with impaired respiratory systems (*e.g.,* asthmatic individuals) as a result of both short-term and prolonged exposures to O_3. The strongest and most quantifiable exposure-response information on such responses has come from controlled human exposure studies, which clearly show that reductions in lung function are enhanced by increased levels of activity involving exertion and by increased O_3 concentrations. Numerous such studies of exercising adults have demonstrated decrements in lung function both for exposures of 1–3 hours at $\geq$ 0.12 ppm O_3 and for exposures of 6.6 hours at $\geq$ 0.08 ppm O_3, providing conclusive evidence that O_3 levels commonly monitored in the ambient air induce lung function decrements in exercising adults. Further, numerous summer camp studies provide an extensive and reliable data base on comparable lung function responses to ambient O_3 and other pollutants in children and adolescents. The extent of pulmonary function decrements varies considerably among individuals, pulmonary function generally tends to return to baseline levels shortly after short-term exposure, and effects are typically attenuated upon repeated short-term exposures over several days.

(ii) Respiratory symptoms and effects on exercise performance. Various transient respiratory symptoms, including cough, throat irritation, chest pain on deep inspiration, and shortness of breath, have been induced by O_3 exposures of both healthy individuals and those with impaired respiratory systems. Increasing O_3 exposure durations and levels have been shown to elicit increasingly more severe symptoms that persist for longer periods

[20] The EPA's request for comments, together with copies of the proposed response and key documents, was transmitted to CASAC in a letter to Dr. Philip Hopke from Dr. Karen Martin, January 14, 2002, which is available in the docket. The EPA had previously provided an earlier draft of the proposed response, together with copies of key documents, to CASAC members in January 2001, ten months before the proposed response was published. *See* letter to Dr. Philip Hopke from Dr. Karen Martin, January 22, 2001 (available in the docket).

[21] See the 1996 proposal and 1997 final rule for more complete summaries and the Criteria Document and Staff Paper for more detailed discussion.

[22] ''Acute'' health effects of O_3 are defined as those effects induced by short-term and prolonged exposures to O_3. Examples of these effects are functional, symptomatic, biochemical, and physiologic changes.

[23] The 1-hour O_3 primary NAAQS set in 1979 was generally based on these acute effects associated with heavy exercise and short-term exposures.

[24] ''Chronic'' health effects of O_3 are defined as those effects induced by long-term exposures to O_3. Examples of these effects are structural damage to lung tissue and accelerated decline in baseline lung function.

in increasingly larger numbers of individuals. Symptomatic and pulmonary function responses follow a similar time course during an acute exposure and the subsequent recovery, as well as over the course of several days during repeated exposures. As with pulmonary function responses, the severity of symptomatic responses varies considerably among subjects. For some outdoor workers or active people who are highly responsive to ambient O_3, respiratory symptoms may cause reduced productivity, may curb the ability or desire to engage in normal activities, and may interfere with maximal exercise performance.

(iii) Increased airway responsiveness. Increased airway responsiveness is an indication that the airways are predisposed to bronchoconstriction, with a high level of bronchial responsiveness being characteristic of asthma. As a result of increased airway responsiveness induced by O_3 exposure, human airways may be more susceptible to a variety of stimuli, including antigens, chemicals, and particles. Because enhanced response to antigens in asthmatics could lead to increased morbidity (*i.e.,* medical treatment, emergency room visits, hospital admissions) or to more persistent alterations in airway responsiveness, these health endpoints raise concern for public health, particularly for individuals with impaired respiratory systems.

(iv) Increased susceptibility to respiratory infection. When functioning normally, the human respiratory tract, like that of other mammals, has numerous closely integrated defense mechanisms that provide protection from the adverse effects of a wide variety of inhaled particles and microbes. Evidence that inhalation of O_3 may break down or impair these defense mechanisms comes primarily from a very large number of laboratory animal studies with generally consistent results. One of the few studies of moderately exercising human subjects exposed to 0.08 ppm O_3 for 6.6 hours reported decrements in alveolar macrophage function, the first line of defense against inhaled microorganisms and particles in the lower airways and air sacs. While no single experimental human study or group of animal studies conclusively demonstrates that human susceptibility to respiratory infection is increased by exposure to O_3, taken as a whole, the data suggest that acute O_3 exposures can impair the host defense capability of both humans and animals, potentially resulting in a predisposition to bacterial infections in the lower respiratory tract.

(v) Hospital admissions and emergency room visits. Increased summertime hospital admissions and emergency room visits for respiratory causes have been associated with ambient exposures to O_3 and other environmental factors. Numerous studies consistently have shown such a relationship, even after controlling for modifying factors, as well as when considering only O_3 concentrations < 0.12 ppm. Individuals with preexisting respiratory disease (*e.g.,* asthma, chronic obstructive pulmonary disease) may generally be at increased risk of such effects, and some individuals with respiratory disease may have an inherently greater sensitivity to O_3. On the other hand, individuals with more severe respiratory disease are less likely to engage in the level of exertion associated with provoking responses to O_3 exposures in healthy humans. On balance, it is reasonable to conclude that evidence of O_3-induced increased airway resistance, nonspecific bronchial responsiveness, susceptibility to respiratory infection, increased airway permeability, airway inflammation, and incidence of asthma attacks suggests that ambient O_3 exposure could be a cause of increased hospital admissions, particularly for asthmatics.

(vi) Pulmonary inflammation. Respiratory inflammation can be considered to be a host response to injury and indicators of inflammation as evidence that respiratory cell damage has occurred. Inflammation induced by exposure of humans to O_3 may have several potential outcomes: (1) Inflammation induced by a single exposure (or even several exposures over the course of a season) could resolve entirely; (2) repeated acute inflammation could develop into a chronic inflammatory state; (3) continued inflammation could alter the structure and function of other pulmonary tissue, leading to disease processes such as fibrosis; (4) inflammation could interfere with the body's host defense response to particles and inhaled microorganisms, particularly in potentially vulnerable populations such as children and older individuals; and (5) inflammation could amplify the lung's response to other agents such as allergens or toxins. Exposures of laboratory animals to O_3 for periods ≤8 hours have been shown to result in cell damage, inflammation, and increased leakage of proteins from blood into the air spaces of the respiratory tract. In humans, the extent and course of inflammation and its constitutive elements have been evaluated by using bronchoalveolar lavage (BAL) to sample cells and fluid from the lung and lower airways. Several such studies have shown that exercising humans exposed (1 to 4 hours) to 0.2 to 0.6 ppm O_3 had O_3-induced markers of inflammation and cell damage, with the lowest concentration of prolonged O_3 exposure tested in humans, 0.08 ppm for 6.6 hours with moderate exercise, inducing small but statistically significant increases in these endpoints. Thus, it is reasonable to conclude that repeated acute inflammatory response and cellular damage is potentially a matter of public health concern; however, it is also recognized that most, if not all, of these effects begin to resolve in most individuals within 24 hours if the exposure to O_3 is not repeated. Of possibly greater public health concern is the potential for chronic respiratory damage that could be the result of repeated O_3 exposures occurring over a season or a lifetime.

b. Potential Effects of Long-term O_3 Exposures

Epidemiologic studies that have investigated potential associations between long-term O_3 exposures and chronic respiratory effects in humans thus far have provided only suggestive evidence of such a relationship. Most studies investigating this association have been cross-sectional in design and have been compromised by incomplete control of confounding variables and inadequate exposure information. Other studies have attempted to follow variably exposed groups prospectively. The findings from such studies conducted in southern California and Canada suggest small, but consistent, decrements in lung function among inhabitants of the more highly polluted communities; however, associations between O_3 and other copollutants and problems with study population loss have reduced the level of confidence in these conclusions. Other epidemiologic studies have attempted to find associations between daily mortality and O_3 concentrations in various cities around the United States. Although an association between ambient O_3 exposure in areas with very high O_3 levels and daily mortality has been suggested by these studies, the data are limited.

In a large number of animal toxicology studies, ''lesions'' [25] in the

[25] Differing views have been expressed by CASAC panel members regarding the use of the term ''lesion'' to describe the O_3-induced morphological (*i.e.,* structural) abnormalities observed in toxicological studies. Section V.C.8 of the Staff

Continued

centriacinar regions of the lung (*i.e.*, the portion of the lung where the region that conducts air and the region that exchanges gas are joined) are well established as one of the hallmarks of O_3 toxicity. Under certain conditions, some of the structural changes seen in these studies may become irreversible. It is unclear, however, whether ambient exposure scenarios encountered by humans result in similar ''lesions'' or whether there are resultant functional or impaired health outcomes in humans chronically exposed to O_3.

The epidemiologic lung function studies generally parallel those of the animal studies, but lack good information on individual O_3 exposure history and are frequently confounded by personal or copollutant variables. Thus, the Administrator recognizes that there is a lack of a clear understanding of the significance of repeated, long-term inflammatory responses, and that there is a need for continued research in this important area. In summary, the collective data on long-term exposure to O_3 garnered in studies of laboratory animals and human populations have many ambiguities. Nevertheless, the currently available information provides at least a biologically plausible basis for considering that repeated inflammation associated with exposure to O_3 over a lifetime may result in sufficient damage to respiratory tissue such that individuals later in life may experience a reduced quality of life, although such relationships remain highly uncertain.

c. Adversity of Effects for Individuals

Some population groups have been identified as being sensitive to effects associated with exposures to ambient O_3 levels, such that individuals within these groups are at increased risk of experiencing such effects. Population groups at increased risk include: (1) Active children and outdoor workers who regularly engage in outdoor activities; [26] (2) individuals with preexisting respiratory disease (*e.g.*, asthma or chronic obstructive lung disease); [27] and (3) some individuals, referred to as ''hyperresponders,'' who are unusually responsive to O_3 relative to other individuals with similar levels of activity or with a similar health status and may experience much greater functional and symptomatic effects from exposure to O_3 than the average individual response.

In making judgments as to when the effects discussed above become significant enough that they should be regarded as adverse to the health of individuals in these sensitive populations, the Administrator has looked to guidelines published by the American Thoracic Society (ATS) and the advice of CASAC. Based on these guidelines, with CASAC concurrence, gradations of individual functional responses (*e.g.*, decrements in forced expiratory volume (FEV_1), increased airway responsiveness) and symptomatic responses (*e.g.*, cough, chest pain, wheeze) were defined, together with judgments as to the potential impact on individuals experiencing varying degrees of severity of these responses.[28]

In judging the extent to which such impacts represent effects that should be regarded as adverse to the health status of individuals, an additional factor considered is whether such effects are experienced repeatedly by an individual during the course of a year or only on a single occasion. While some experts would judge single occurrences of moderate responses to be a ''nuisance,'' especially for healthy individuals, a more general consensus view of the adversity of such moderate responses emerges as the frequency of occurrence increases. Thus, EPA has concluded that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered to be adverse since they could well set the stage for more serious illness.

2. Human Exposure and Risk Assessments

To put judgments about respiratory health effects that are adverse for individuals into a broader public health context, the Administrator has taken into account the results of human exposure and risk assessments.[29] This broader context includes consideration, to the extent possible, of the particular population groups at risk for various health effects, the number of people in at-risk groups likely to be exposed to O_3 concentrations shown to cause health effects, the number of people likely to experience certain adverse health effects under varying air quality scenarios, and the kind and degree of uncertainties inherent in these assessments. These quantitative assessments add to our understanding of the overall body of evidence linking O_3 inhalation exposures to adverse health effects. The models used in these assessments were appropriate and the methods used represent the state of the art.

a. Exposure Analyses

The EPA conducted exposure analyses to estimate O_3 exposures for the general population and two at-risk populations, active children who regularly engage in outdoor activity (*i.e.*, ''outdoor children'') and ''outdoor workers,'' living in nine representative U.S. urban areas.[30] Exposure estimates were developed for a baseline year (*e.g.*, 1993, 1994), using monitored O_3 air quality data (*i.e.*, the ''as is'' scenario), as well as for simulated air quality conditions reflecting attainment of the 1-hour NAAQS and various alternative standards. The exposure analyses provide: (1) Estimates of the number of people exposed in each of these population groups to various O_3 concentrations, and the number of occurrences of such exposures, under different regulatory scenarios,[31] which are an important input to the risk assessment conducted for certain adverse health effects (summarized in the next section); and (2) estimates of the frequency of occurrences of O_3 ''exposures of concern,'' [32] which help

Paper describes and discusses these degenerative changes in more detail.

[26] Exertion increases the amount of O_3 entering the airways and can cause O_3 to penetrate to peripheral regions of the lung where lung tissue is more likely to be damaged.

[27] While not necessarily more responsive than healthy individuals in terms of the magnitude of pulmonary function decrements or symptomatic responses, these individuals may be at increased risk since the impact of O_3-induced responses on already-compromised respiratory systems may more noticeably impair an individual's ability to engage in normal activity or may be more likely to result in increased self-medication or medical treatment.

[28] These gradations and impacts are summarized in the 1996 proposal and discussed in the Criteria Document (Chapter 9) and Staff Paper (section V.F, Tables V–4 and V–5).

[29] See the 1996 proposal (61 FR 65723–6) and 1997 final rule (62 FR 38860–1) for a more complete summary of these assessments. A detailed description of the exposure and risk models and their application at the time of the 1996 proposal are presented in the Staff Paper and associated technical support documents (Johnson, 1994; Johnson *et al.*, 1996 a,b; Whitfield *et al.*, 1996). Following proposal, supplemental exposure and risk analyses were done to analyze the specific standard proposed and alternative standards on which comment was solicited, as well as to refine the procedures used to simulate O_3 concentrations upon attainment of alternative standards (Richmond, 1997).

[30] The areas include a significant fraction of the U.S. urban population, 41.7 million people, the largest urban areas with major O3 nonattainment problems, and two large urban areas that are in attainment with the 1-hour NAAQS.

[31] Estimates of ''people exposed'' reflect the number of people who experience exposures to a given concentration of O_3, or higher, at least one time during the period of analysis, and estimates of ''occurrences of exposure'' reflect the number of times a given O_3 concentration is experienced by the population of interest.

[32] ''Exposures of concern'' refer throughout to O_3 exposures at and above 0.08 ppm, 8-hour average, at moderate exertion. Such exposures are particularly relevant to a consideration of a number of health effects, discussed in section I.A.1 above, that have been observed in controlled human studies under these exposure conditions, but for which data were too limited to allow for

to put into broader perspective other O_3-related health effects that could not be included in the risk assessment (summarized below).

The computer model used in these analyses, the probabilistic NAAQS exposure model for O_3 (pNEM/O_3), combines information on O_3 air quality with information on patterns of human activity to produce estimates of O_3 inhalation exposures. This model has been developed to take into account the most significant factors contributing to total O_3 inhalation exposure including: The temporal and spatial patterns of ground-level O_3 concentrations throughout an urban area; the variations of O_3 levels within a comprehensive set of ''microenvironments;'' [33] the temporal and spatial patterns of the movement of people throughout an urban area; and the effects of variable exertion levels (represented by ventilation rates), associated with a range of activities that people regularly engage in, on O_3 uptake in exposed individuals. The analysis of these key factors incorporated extensive data bases, including, for example, data from ground-level O_3 monitoring networks in these areas, data from numerous research studies that characterized the activity patterns of the general population and at-risk groups as they go about their daily activities (*e.g.*, from indoors to outdoors, moving from place to place, and engaging in activities at different exertion levels),[34] and census data on relevant factors such as age, work status, home location and type of air conditioning system present, and work place location.

The regulatory scenarios examined in the exposure analyses include both 1-hour O_3 standards, at levels of 0.12 ppm (the 1979 NAAQS) and 0.10 ppm, and 8-hour standards, at levels of 0.07, 0.08, and 0.09 ppm, with 1- and 5-expected exceedance forms, *i.e.*, the range of alternative 8-hour standards recommended in the Staff Paper and supported by CASAC as the appropriate range for consideration in this review. These estimates were also used to roughly bound exposure estimates for concentration-based forms of the standards under consideration (*e.g.*, the second- and fifth-highest daily maximum 8-hour average O_3 concentration, averaged over a 3-year period).[35] The estimated exposures are based on a single year of air quality data and reflect what would be expected in a typical or average year in an area just attaining a given standard over a 3-year compliance period; additional analyses were done to estimate exposures that would be expected in the worst year of a 3-year compliance period.

Based on the results of the exposure analyses, children who are active outdoors (representing approximately 7 percent of the population in the study areas) appear to be the at-risk population group examined with the highest percentage and number of individuals likely to experience exposures of concern. Estimated exposures of concern varied significantly across the urban areas examined in this analysis, with far greater variability associated with the 1-hour NAAQS in contrast to the more consistent results associated with alternative 8-hour standards.[36] Despite this variability across areas, general patterns can be seen in comparing alternative standards. For example, for aggregate estimates of the mean percent of outdoor children likely to experience exposures of concern within the seven nonattainment areas: The range of estimates associated with the 1-hour NAAQS is approximately 0.3–24 percent, whereas for alternative 8-hour standards (of the same 1-expected-exceedance form as the 1-hour NAAQS), the ranges are approximately 3–7 percent for a 0.09 ppm standard, 0–1 percent for a 0.08 ppm standard, and essentially zero for a 0.07 ppm standard. Within any given urban area, these differences in estimated exposures of concern between alternative standards are statistically significant.

In looking more specifically at a comparison between 8-hour standards at the 0.09 ppm and 0.08 ppm levels, aggregate estimates of the mean percentage of outdoor children likely to experience exposures of concern are estimated to be approximately 3 percent at the 0.08 ppm level (ranging from 2–10 percent in the nine areas), increasing to approximately 11 percent at the 0.09 ppm level (ranging from 7–29 percent in the nine areas).[37] Thus, based on these analyses, a standard set at 0.09 ppm would allow more than three times as many children to experience exposures of concern as would a 0.08 ppm standard, with the number of children likely to experience such exposures increasing from approximately 100,000 to more than 300,000 in these nine areas alone. These exposures of concern are judged by EPA to be an important indicator of the public health impacts of those O_3-related effects for which information is too limited to develop quantitative estimates of risk, but which have been observed in humans at a level of 0.08 ppm for 6- to 8-hour exposures. Such effects include increased nonspecific bronchial responsiveness (related, for example, to aggravation of asthma), decreased pulmonary defense mechanisms (suggestive of increased susceptibility to respiratory infection), and indicators of pulmonary inflammation (related to potential aggravation of chronic bronchitis or long-term damage to the lungs).

In taking these observations into account, the Administrator and CASAC recognized the uncertainties and limitations associated with such analyses, including the considerable, but unquantifiable, degree of uncertainty associated with a number of important inputs to the exposure model. A key uncertainty in model inputs results from limitations in the human activity data base that may not adequately account for day-to-day repetition of activities common to children, such that the number of people who experience multiple occurrences of high exposure levels may be underestimated. Small sample size also limits the extent to which ventilation rates associated with various activities may be representative of the population group to which they are applied in the model. In addition, the air quality adjustment procedure used to simulate air quality distributions associated with attaining alternative standards, while based on generalized models intended to reflect patterns of air quality changes that have historically been observed, contains significant uncertainty, especially when applied to areas requiring very large reductions in air quality to attain alternative standards

quantitative risk assessment. Exposures at and above 0.12 ppm, 1-hour average, at heavy exertion, are also of concern; however, the focus here is on 8-hour average exposures since exposure estimates are higher for the 8-hour average effects level of 0.08 ppm at moderate exertion than for the 1-hour average effects level of 0.12 ppm at heavy exertion.

[33] The five indoor and two outdoor microenvironments included in this exposure model account for the highly localized variations in O_3 concentrations to which people are exposed that are not directly reflected in the concentrations measured at ambient ground-level O_3 monitoring sites.

[34] See, for example, Tables V–8 and V–9 in the Staff Paper, pp. 83–84.

[35] As discussed in section IV and appendix A of the Staff Paper.

[36] The observed area-to-area variability reflects differences in the shape of air quality distributions and differences in the relationships between 1-hour and 8-hour peak concentrations across urban areas, as well as differences in the percentage of homes with air conditioning (which impacts exposure estimates when individuals are indoors) and the frequency of warm versus cool days (which impacts exposure estimates because different sets of human activity patterns are used for warm versus cool days in the exposure model) across the nine urban areas (Richmond, 1997).

[37] Based on the supplemental analyses that used the third-highest concentration-based form of the standards (Richmond, 1997).

or to areas that are now in attainment with the 1-hour NAAQS.[38]

b. Risk Assessments

The EPA conducted an assessment of health risks for several categories of respiratory effects considering the same population groups, alternative air quality scenarios, and urban areas that were examined in the human exposure analyses described above. The objective of the risk assessment was to estimate to the extent possible the magnitude of risks to population groups believed to be at greatest risk either due to increased exposures (*i.e.,* outdoor children and outdoor workers) or increased susceptibility (*e.g.,* asthmatics) while characterizing, as explicitly as possible, the uncertainties inherent in the assessment. While different risk measures are provided by the assessment, EPA has focused on ''headcount risk'' estimates which include: (1) Estimates of the number of people likely to experience a given health effect and (2) estimates of the number of incidences of a given health effect likely to be experienced by the population group of interest (n.b., some individuals likely experience that given health effect more than once in a year). While the estimates of numbers of people and incidences of effects are subject to uncertainties and should not be viewed as demonstrated health impacts, EPA believes they do represent reasonable estimates of the likely extent of these effects on public health given the available information.

This risk assessment builds upon earlier O_3 risk assessment approaches developed during the previous O_3 NAAQS review. The risk models produce estimates of risk by taking into account: (1) Exposure-response or concentration-response relationships used to characterize various respiratory effects of O_3 exposure; (2) distributions of population exposures upon attainment of alternative standards resulting from the exposure analyses described above; and (3) distributions of 1-hour and 8-hour daily maximum O_3 concentrations upon attainment of alternative standards, developed as part of the exposure analyses. The assessment addresses a number of adverse lung function and respiratory symptom effects as well as increased hospital admissions, as discussed below.

(i) Adverse lung function and respiratory symptom effects. Risk estimates have been developed for several of the respiratory effects observed in controlled human exposure studies to be associated with O_3 exposure for which sufficient quantitative dose-response information was available. These effects include lung function decrements (measured as changes in FEV_1) and pain on deep inspiration (PDI).[39] More specifically, these effects, or health endpoints, are defined not only in terms of physiological responses, but also the amount of change in that response judged to be of medical significance (as discussed in section II.A.3 above). For decrements in FEV_1 responses, risk estimates are provided for the lower end, midpoint, and upper end of the range of response considered to be an adverse health effect (*i.e.,* ≥ 10, 15, or 20 percent FEV_1 decrements), while for PDI responses, risk estimates are provided for moderate and severe responses. Although some individuals may experience a combination of responses, risk estimates could only be provided for each individual health endpoint rather than various combinations of functional and symptomatic responses.

The exposure-response relationships used to characterize these functional and symptomatic effects were based on the controlled human exposure studies, and were applied to ''outdoor children,'' ''outdoor workers,'' and the general population.[40] These exposure-response relationships were combined with the results of the exposure analyses, which provided distributions of population exposures estimated to occur upon attainment of alternative standards, in terms of both the number of individuals in the general population, outdoor workers, and outdoor children exposed and the number of occurrences of exposure.

Following from the results of the exposure analyses showing outdoor children to be the population group experiencing the greatest exposures, this population group also has the highest estimated risk in terms of the percent of the population, and the numbers of children, likely to experience the health effects included in the assessment. As expected, the risk estimates exhibit the same general patterns in comparing alternative standards as was observed in the results of the exposure analyses. Estimated risk varied significantly across the urban areas examined, with greater variability associated with the 1-hour NAAQS than with alternative 8-hour standards, and, within any given urban area, the differences in risk estimated for the various 1-hour and 8-hour standards analyzed were statistically significant.

In looking more specifically at a comparison between 8-hour standards at the 0.09 ppm and 0.08 ppm levels, aggregate estimates of the number of outdoor children in the nine areas likely to experience moderate (≥ 15 percent) and large (≥ 20 percent) FEV_1 decreases and moderate or severe PDI are summarized in the 1997 final rule.[41] For example, for large FEV_1 decreases (≥ 20 percent), approximately 2 percent of outdoor children (58,000 children) would likely experience this effect one or more times per year (100,000 occurrences) at the 0.08 ppm standard level, increasing to approximately 3 percent of outdoor children (97,000 children and 220,000 occurrences) at the 0.09 ppm standard level. Based on this assessment, a standard set at 0.09 ppm would allow approximately 40–65 percent more outdoor children to experience these functional and symptomatic effects than would a 0.08 ppm standard, and approximately 70–120 percent more occurrences of such effects in outdoor children per year.

In considering these observations, the Administrator and CASAC have recognized that there are many uncertainties inherent in such assessments, not all of which can be quantified. Some of the most important caveats and limitations in this assessment include: (1) The uncertainties and limitations associated with the exposure analyses discussed above; (2) the extrapolation of exposure-response functions, consistent with CASAC's recommendation, that projects some biological responses below the lowest-observed-effects levels to an estimated background level of 0.04 ppm; and (3) the inability to account for some factors which are known to affect the exposure-response relationships (*e.g.*, assigning children the same symptomatic response rates as observed for adults and not adjusting response rates to reflect the increase and attenuation of responses that have been

[38] A more complete discussion of uncertainties and limitations is presented in the Staff Paper and technical support documents (Johnson *et al.,* 1996a,b; Richmond, 1997).

[39] Each of the effects is associated with a particular averaging time and, for most of the acute (1- to 8-hour) responses, effects also are estimated separately for specific ventilation ranges [measured as equivalent ventilation rate (EVR)] that correspond to the EVR ranges observed in the studies used to derive exposure-response relationships.

[40] While these studies only included adults aged 18–35, findings from other clinical studies and summer camp field studies in several locations across the U.S. and Canada indicate changes in lung function in healthy children similar to those observed in healthy adults exposed to O_3 under controlled laboratory conditions.

[41] Based on the supplemental analyses that used the third-highest concentration-based form of the standards (Richmond, 1997).

observed in studies of lung function and symptoms upon repeated exposures).[42]

(ii) Excess respiratory-related hospital admissions. A separate risk assessment was done for increased respiratory-related hospital admissions as reported in several epidemiologic studies.[43] The assessment looked only at one urban area, New York City, for which adequate air quality information also was available to assess population risk. Increased respiratory-related hospital admissions for individuals with asthma were modeled using a probabilistic concentration-response function based on the results of an epidemiologic study in New York City (Thurston *et al.*, 1992) and estimated distributions of daily maximum 1-hour average O_3 concentrations upon attainment of alternative standards at various monitors in New York City (developed as part of the exposure analysis discussed above).[44] The resulting risk estimates are for excess respiratory-related hospital admissions (*i.e.*, those attributable to O_3 concentrations above an estimated background O_3 level of 0.04 ppm) for asthmatic individuals over an O_3 season.

Similar to the risk assessment discussed above for lung function and respiratory symptom effects, reductions in hospital admissions for respiratory causes for asthmatic individuals and the general population are estimated to occur with each change in the level of alternative 8-hour standards from 0.09 ppm to 0.07 ppm. In looking more specifically at a comparison between 8-hour standards at 0.09 ppm and 0.08 ppm levels, a standard set at 0.09 ppm is estimated to allow approximately 40 more excess hospital admissions of asthmatics within an O_3 season in New York City for respiratory causes as compared to a 0.08 ppm standard, which represents approximately a 40 percent increase in excess O_3-related admissions, but only approximately a 0.3 percent increase in total admissions of asthmatics. The EPA believes that while these numbers of hospital admissions are relatively small from a public health perspective, they are indicative of a pyramid of much larger numbers of related O_3-induced effects, including respiratory-related hospital admissions among the general population, emergency and outpatient department visits, doctors visits, and asthma attacks and related increased use of medication that are important public health considerations.

In taking these observations into account, the Administrator recognizes the uncertainties and limitations associated with this assessment. These include: (1) The inability at this time to quantitatively extrapolate the risk estimates for New York City to other urban areas; (2) uncertainty associated with the underlying epidemiologic study from which the concentration-response relationship used in the analysis was drawn; and (3) uncertainties associated with the air quality adjustment procedure used to simulate attainment of alternative standards for the New York City area.[45]

B. Potential Indirect Beneficial Health Effects Associated with Ground-level O_3

This section is drawn from information in the record of the 1997 review with regard to the effect of ground-level O_3 on the attenuation of UV–B radiation and potential associated health benefits. All relevant record information was reviewed, including EPA documents, published articles, oral testimony at public meetings, and written comments submitted during the rulemaking and on the proposed response. This section summarizes information on the health effects associated with UV–B radiation exposure (section B.1) and the relationship between ground-level O_3 and UV–B radiation (section B.2), and evaluates estimates of UV–B radiation risks that have been attributed to reductions in ground-level O_3 projected to result from attainment of the 1997 O_3 NAAQS (section B.3). This section also responds to a number of technical comments on the proposed response relating to (i) the distinctions that EPA has drawn between assessing the public health impacts of changes in stratospheric versus ground-level O_3, (ii) the distinctions between assessing the public health impacts of changes in inhalation-related exposures to ground-level O_3 versus the impacts of changes in dermal-related exposures to UV–B radiation as mediated by changes in ground-level O_3, and (iii) the appropriate weight to give to analyses in the record that provide quantitative estimates of the public health impacts of changes in dermal-related exposures to UV–B radiation as mediated by changes in ground-level O_3.

1. Health Effects Associated with UV–B Radiation Exposure

The following short summary of information[46] on the adverse human health effects associated with exposure to UV–B radiation focuses on the three major organ systems whose tissues are commonly exposed to solar radiation: the skin, eyes, and immune system.[47] It is these three systems that are potentially subject to damage from increased UV–B radiation as a result of the absorption of solar energy by molecules present in the cells and tissues of these organs. The biologically effective dose of radiation that actually reaches target molecules generally depends on the duration of exposure at particular locations, time of day, time of year, behavior (*i.e.*, ''sun avoidance'' and ''sun seeking'' behavior[48]), and, for the skin, characteristics that include pigmentation and temporal variations (*e.g.*, changes in the pigmentation due to tanning).

a. Effects on the Skin

The most common form of solar damage to the skin is sunburn. Susceptibility to sunburn and the ability to tan are the basis for a classification system of six skin phenotypes. The most sensitive individuals (skin type I) are very light-skinned, with red or blonde hair and blue or green eyes (U.S. EPA, 1987, ES–33). The most resistant individuals (skin type VI) are darkly pigmented even without exposure to solar radiation. Susceptibility to sunburn may be a risk factor for skin cancer.

Among light-skinned populations, skin cancer is among the most common kinds of cancer. The three types of skin cancer that have been associated with exposure to solar radiation include two common types of nonmelanoma skin cancers (NMSC), squamous cell carcinoma (SCC) and basal cell carcinoma (BCC), and melanoma, a far less common form of cancer.

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[42] A more complete discussion of assumptions and uncertainties is presented in the Staff Paper and the technical support documents (Whitfield *et al.*, 1996; Richmond, 1997).

[43] Several studies, mainly conducted in the northeastern U.S. and southeastern Canada have reported excess daily respiratory-related hospital admissions associated with elevated O_3 levels within the general population and, more specifically, for individuals with asthma.

[44] The model is described in more detail in Whitfield *et al.* (1996) and results from the supplemental analysis are presented in Richmond (1997).

[45] A more complete discussion of these uncertainties and limitations is presented in the Staff Paper and technical support documents (Whitfield *et al.*, 1996; Richmond, 1997).

[46] More detailed information about the health effects associated with UV–B radiation exposure may be found in the proposed response to the remand (66 FR 57278–57280).

[47] The reference document available in the record for the information in this section is the EPA document ''Assessing the Risk of Trace Gasses that Can Modify the Stratosphere'' (U.S. EPA, 1987).

[48] Sun avoidance is an intentional decrease in exposure, for example, by using clothing, sunscreens, and sunglasses to shield the body from solar radiation. Sun seeking behavior is an intentional increase in exposure to solar radiation, for example, by sunbathing.

Prolonged exposure to the sun is considered to be the dominant risk factor for NMSC (U.S. EPA, 1987, ES–33). It has been observed that NMSC tends to develop on sites that are most frequently exposed to the sun (*e.g.*, head, face, and neck). Outdoor workers, who are subject to greater exposure to solar radiation, tend to have higher incidence rates of NMSC. A latitudinal gradient exists for the flux of UV–B radiation (*i.e.*, the amount of radiation transmitted through the atmosphere), with fluxes generally higher in lower latitudes. A similar latitudinal gradient is generally seen in incidence rates of NMSC. Skin pigmentation provides a protective barrier that reduces the risk of developing NMSC, such that light-skinned individuals, who are more susceptible to sunburn and have blue or green eyes, are more likely to develop NMSC.

Both types of NMSC result from the malignant transformation of keratinocytes, the major structural cells of the skin. Cumulative long-term exposure to UV radiation is the exposure of concern for both types of NMSC. More specifically, the incremental increase in cumulative lifetime exposure to UV–B radiation is the metric used to estimate the risk of increased incidence of NMSC (U.S. EPA, 1987, ES–3). Epidemiological evidence, however, also indicates that exposure to solar radiation may play different roles in the etiology of SCC and BCC. In particular, SCC is more likely to develop on sites receiving the highest cumulative UV radiation doses (*e.g.*, nose), and the development of SCC is more strongly associated with cumulative exposure to UV radiation. Relative to SCC, BCC is more likely to develop on sites that are not normally exposed to the sun, such as the trunk. For a given cumulative level of exposure to solar radiation, the risk of developing SCC may be greater than the risk of developing BCC.

Dose-response relationships for NMSC are generally estimated in terms of a biological amplification factor (BAF), which is defined as the percent change in tumor incidence that results from a 1 percent change in UV–B radiation. While there is considerable uncertainty in such estimates, results from several studies have produced an overall BAF range that is 1.8 to 2.85 for all nonmelanoma skin tumors (U.S. EPA, 1987, ES–34). The BAF estimates are generally higher for males than females and for SCC than BCC, and generally increase with decreasing latitude. Key uncertainties in these estimates include, for example, uncertainties in the actual doses of UV–B radiation received and in the underlying baseline incidence rates in populations. Additional uncertainty is introduced in estimating the change in mortality from NMSC associated with changes in UV–B radiation, reflecting in part discrepancies of reporting between death certificates and hospital diagnoses. Based on published estimates, rates of metastasis among SCCs and BCCs varied by one to two orders of magnitude, with rates estimated to be approximately 2 to 20 percent for SCC and 0.0028 to 0.55 percent for BCC. The overall fatality rate for NMSC has been estimated to be approximately 1 to 2 percent, with three-fourths to four-fifths of the deaths attributable to SCC (U.S. EPA, 1987, ES–34).[49]

Melanoma is a serious, life-threatening skin cancer that is far rarer and generally much more aggressive than NMSC. The relationship between exposure to UV–B radiation and melanoma is not as clear as the relationship between exposure to UV–B radiation and NMSC. The EPA (1987) noted limitations in the evidence linking solar radiation to melanoma. For example, no animal models were identified in which exposure to UV–B radiation experimentally induces melanoma, and no *in vitro* models for malignant transformation of melanocytes. Despite these limitations, EPA (1987) recognizes that a large array of evidence does support the conclusion that solar radiation is one of the causes of melanoma. Melanin, the principal pigment in the skin, effectively absorbs UV radiation, such that darker skin provides more protection from UV radiation. Lighter-skinned individuals, whose skin contains less protective melanin, have higher incidence and mortality rates from melanoma than do darker-skinned individuals.

Sun exposure seems to induce freckling, which is an important risk factor for melanoma, and sun exposure leading to sunburn apparently induces melanocytic moles, which are also a risk factor for melanoma. Additional evidence suggests that melanoma risk may be associated with childhood sunburn. However, other evidence suggests that childhood sunburn may be a surrogate for an individual's pigmentation characteristics or be related to mole development, rather than being a separate risk factor (U.S. EPA, 1987, ES–37).

[49] More recent estimates of mortality rates from NMSC may be found on the American Cancer Society's Web site *http://www.cancer.org,* under cancer type ''Skin, Nonmelanoma,'' then under ''Nonmelanoma Skin Cancer—Overview.''

Most studies that have used latitude as a surrogate for sunlight or UV–B exposure have found an increase in melanoma incidence or mortality correlated with proximity to the equator. Other evidence, however, creates uncertainty about the relationship between solar radiation and melanoma. Some ecologic epidemiology studies, conducted primarily in Europe or in countries close to the equator, have failed to find a latitudinal gradient for melanoma. In addition, outdoor workers generally have lower incidence and mortality rates from melanoma than indoor workers, which appears to be incompatible with the hypothesis that the cumulative dose from exposure to solar radiation causes melanoma. Unlike NMSC, most melanoma occurs on sites of the body that are not habitually exposed to sunlight. This evidence suggests that exposure to solar radiation, or UV–B, is not solely responsible for variations in the incidence and mortality from melanoma (U.S. EPA 1987, ES–37).

Considering the available evidence, EPA (1987) concluded that UV–B radiation is a likely component of solar radiation that causes melanoma, either through the initiation of tumors or through suppression of the immune system. The EPA (1987) also recognized that significant uncertainties exist in characterizing associations between solar radiation and melanoma, including the appropriate action spectrum to be used in estimating doses, the best functional form for a dose-response relationship, and the best way to characterize dose (*e.g.*, peak value, cumulative summer exposure).

b. Effects on the Eyes

Evidence suggests that adverse effects on the eye are associated with exposure to UV–B radiation. Effects likely include increases in cataract incidence or severity and increased incidence of retinal disorders and retinal degeneration. Cataracts are characterized by the gradual loss of transparency of the lens due to the accumulation of oxidized lens proteins. Many possible mechanisms exist for the formation of cataracts, and UV–B radiation may play an important role in some mechanisms. Therefore, while epidemiological studies indicate that the prevalence of human cataracts varies with latitude and UV radiation in general (U.S. EPA, 1987, ES–40), significant uncertainty exists about the action spectrum to be used in any estimation of dose associated with variations in solar radiation. Epidemiological and laboratory evidence indicates that the exposure of

concern in the development of cataracts is the cumulative lifetime exposure to UV–B radiation.

c. Effects on the Immune System

Information on the effects of UV–B radiation on the immune system comes primarily from laboratory animal studies. High doses of UV radiation cause a depression in systemic hypersensitivity reactions, whereas relatively lower doses cause a depression in local contact hypersensitivity. Both of these immunosuppressive effects of UV radiation have been found to reside almost entirely in the UV–B portion of the solar spectrum (U.S. EPA, 1987, ES–39).

Information about the effects of UV radiation on the human immune system, however, is very limited. Without more complete information from laboratory or epidemiological studies, the nature of an exposure of concern cannot be estimated. Immunologic studies have not assessed the effects of long-term, low-dose UV–B irradiation, such that the magnitude of risk from this type of exposure cannot be assessed (U.S. EPA, 1987, ES–40).

2. Relationship Between Ground-level O_3 and UV–B Radiation Exposure

a. Relevant Atmospheric Factors

The relationships between ground-level O_3 and UV radiation occur in the context of a much larger dynamic of the earth's atmospheric systems. The sun is, of course, overwhelmingly the main source of a wide band of electromagnetic radiation, including the ultraviolet. The total atmosphere blocks a significant portion of the range of this incoming solar radiation before it reaches ground level, including much of the more energetic wavelengths that are shorter than visible light (400–900 nm). The UV spectrum (100–400 nm) is comprised of UV–C (100–280 nm), UV–B (280–320 nm), and UV–A (320–400 nm). Ultraviolet -B radiation is efficiently but not completely absorbed by total column O_3. Wavelengths above 350 nm, including visible light, are not absorbed by oxygen (O2) or O_3 (U.S. EPA, 1987, ES 35). Because the amount of atmospheric O_3 traversed by sunlight varies with the sun angle, atmospheric absorption is more complete in winter months and both early and late in the day, as compared to the absorption around mid-day near the summertime solar zenith. Therefore, a decrease in total column O_3 from naturally occurring conditions is of greater concern during times of higher sun angles, and for the more energetic portion of the UV–B range.

The underlying annual and diurnal patterns of UV–B penetration to the ground layer are driven primarily by three factors: (1) The change in apparent sun angle with the surface that occurs as the earth travels around the sun; (2) the diurnal change in apparent sun angle caused by the earth's rotation; and (3) the solar/meteorologically driven annual change in the amount of O_3 in the stratosphere. Stratospheric O_3 over U.S. latitudes shows a characteristic peak in the spring months, falling steadily thereafter through summer and fall (Fishman *et al.*, 1990; Frederick *et al.*, 1993). The combination of the annual sun cycle and the stratospheric O_3 cycle means that peak UV–B radiation reaching the troposphere tends to occur in late June to early July, and falls steadily thereafter (Frederick *et al.*, 1993). The annual peak in ground-level O_3 concentrations, which extends in most areas from May through September, generally overlaps the UV–B radiation peak (*e.g.*, U.S. EPA, 1996a, Figure 4–23). Diurnal patterns of ground-level O_3 vary, but in urban areas, summertime peaks tend to occur between noon and 4 pm (U.S. EPA, 1996a, section 4.4). This obviously overlaps with peak incoming UV–B radiation. The pattern of vertical mixing in the atmosphere is such that morning ground-level measurements probably do not accurately reflect ''mixing-layer'' concentrations (U.S. EPA, 1996a, p. 3–44).[50]

The relationship between ground-level O_3 and solar radiation, including UV–B radiation, is complex and mediated by a number of atmospheric factors. It is not limited to the simple absorption of energy. At a fundamental level, the variation in apparent solar radiation is a primary cause of meteorological fluctuations that strongly influence the build-up and transport of anthropogenic air pollution. Further, as discussed in Chapter 3 of the Criteria Document, UV–B radiation that penetrates the stratosphere to the mixing layer plays a key role in the processes leading to the formation of photochemical smog, including the formation of ground-level O_3. In fact, increased penetration of UV–B radiation to the troposphere due to stratospheric O_3 depletion would likely increase ground-level concentrations of O_3 in most urban and many rural areas of the U.S. (U.S. EPA, 1996a, p. 3–5). The chain of indirect events triggered by increased penetration of UV–B radiation can result in both increases and decreases in aerosol and acid rain formation (U.S. EPA, 1996a; pp. 3–38 to 39), with attendant further feedbacks through heterogeneous chemistry and aerosol scattering of UV–B radiation. All of these complex processes could, under varying conditions, increase or decrease the amount of UV–B radiation that actually reaches ground level relative to an unperturbed case. The reactions can further affect the concentrations of radiatively important substances such as methane, O_3, and particles, and could affect local, regional, and global climate.

Setting aside the direction and magnitude of these complex indirect effects of UV–B radiation penetration on ground-level air pollution, and assuming appropriate sun angles and cloud density, the marginal effect of ground-level O_3 on the absorption of UV–B radiation by the earth's atmosphere can be considered separately. Because of increased scattering of incident UV–B radiation by the denser layer air molecules, droplets, and particles nearer the surface, tropospheric O_3 can absorb somewhat more UV–B radiation than an equal amount of O_3 in the stratosphere (Brühl and Creutzen, 1989). The extent to which this increase in unit effect occurs depends on the relative concentrations and character of aerosols in the troposphere as compared to the stratosphere.

A further consideration is the relative effectiveness of ground-level O_3 in absorbing those spectra of UV–B radiation wavelengths most likely to cause health effects. The ''effective dose'' of UV–B radiation can be expressed as a function of two factors, the intensity of radiation (by wavelength) reaching the earth's surface and the action spectrum. The wavelength-dependent effect of O_3 on reducing the intensity of radiation in the UV–B range is summarized above. The action spectrum describes how effective radiation at particular wavelengths is at causing a particular biological effect or a response in an instrument. Action spectra allow the estimation of the potential effects of simultaneously changing radiation at different wavelengths by different amounts, as happens with changing O_3 levels. Laboratory and field studies have been used to estimate and adopt action spectra conventions for various biological endpoints (*e.g.*, Madronich, 1992). As noted above, uncertainty exists about the action spectra as well as how to specify appropriate dose metrics for particular health endpoints. Even estimates of the range of wavelengths

[50] The mixing layer (relevant to the vertical ''thickness'' of ground-level O_3) develops and grows in height through the day.

considered to be generally biologically active vary within the UV–B radiation spectrum. These different action spectra have different sensitivities to changes in total column O_3, which are formalized as numerical radiation amplification factors (RAF).[51] In general, a 1 percent change in total column O_3 will produce greater than a 1 percent change (*e.g.*, 1.1 to 1.8 percent) in effective radiation dose for particular effects.

Nevertheless, as noted above, typical summertime ground-level O_3 pollution in the eastern U.S. is less than 1 percent of total column O_3. Even considering the relative effectiveness of ground-level O_3 in reducing UV–B radiation and the amplification of effective dose, such pollution could add a few percent at most to naturally occurring biologically effective UV–B radiation shielding.[52] Viewed from one perspective and holding all other factors constant, the assumed typical O_3 pollution level is providing some ''improvement'' or incremental UV–B radiation shielding above the natural conditions that would otherwise exist in the mixing layer. It should also be noted that, if typical summertime O_3 levels were assumed to approximate the estimated continental background of about 40 ppb for daylight hours (U.S. EPA, 1996b, p.p. 20–21), this too would represent an ''improvement'' over the natural conditions that would exist in the mixing layer without the influence of international transport of O_3.[53]

The extent to which changes in ground-level O_3 concentrations would translate into changes in UV–B radiation-related health effects in various locations cannot, however, be adequately viewed by reference to uniform assumptions applicable for specific sun angle, latitude, time of day, cloud cover, and the presence of other pollutants.[54] In the real world, all of these factors vary with location, season, meteorology, and time of day. Moreover, the complex causal relationships noted above among all of these factors mean that neither static calculations holding other factors constant (*e.g.*, Cupitt, 1994) nor simple empirical associations between measured ground-level O_3 and UV–B radiation (*e.g.*, Frederick *et al.*, 1993) provide an adequate basis for assessing the ''net'' shielding associated with control strategy driven changes in ground-level pollution in various locations over an extended time period. Moreover, as for the direct effects of O_3, the extent of resultant UV–B radiation-related health effects is also heavily dependent on the variation of these physical changes superimposed on the activity patterns and other factors that determine population exposures and sensitivities to UV–B radiation, and on the extent to which significant biological responses can be attributed in part to episodic peak exposures as well as to long-term cumulative exposures.

Assessing the effective O_3 layer shielding is considerably more difficult for ground-level O_3 than for stratospheric O_3 because of its far greater spatial and temporal variability and the much smaller contribution to the total O_3 column made by ground-level O_3. Some insights into the relative variability of these two layers are provided in Fishman *et al.* (1990), which compares satellite measurements of stratospheric O_3 with ''residual'' tropospheric O_3, a measure that actually excludes the lowest portion of the ground-layer O_3 in the mixing layer. For the summer months, the long-term spatial variability in the amount of O_3 in the stratosphere across the lower 48 U.S. States is about 7 percent (Figure 8c), while the variability in the tropospheric ''residual'' is nearly 4 times greater, at about 25 percent (Figure 9c). By comparison, the spatial variability in ground-level O_3 measurements across regions and cities in the U.S. is far greater (U.S. EPA, 1996a, Chapter 4) reaching 200 percent and higher for comparable long-term measurements. Within an area as small as the Los Angeles basin alone, for example, the median ground-level 8-hour O_3 values in different locations varied by more than a factor of 2 (Table 28; Johnson *et al.*, 1996c). The satellite information also shows a marked contrast in the seasonal variations in O_3 for these two layers. The variation in the summer/winter stratospheric O_3 column over the U.S. is only about 2 to 4 percent, while the variation in seasonal ''residual'' tropospheric O_3 is about 50 to 80 percent (Figures 8a,c;9a,c; Fishman *et al.*, 1990). Again, the variability is even greater for ground-level measurements (*e.g.*, U.S. EPA, 1996a, Figure 4–23; Frederick *et al.*, 1993).

Although Fishman *et al.* (1990) do not compare daily variations in stratospheric O_3 above the U.S., it is reasonable to conclude that the spatial and annual/seasonal temporal stability evidenced by this large stratospheric reservoir would result in far more stable day-to-day and diurnal patterns as compared to ground-level O_3. The high variability of daytime O_3 concentrations for these temporal scales is amply documented in the Criteria Document (U.S. EPA, 1996a, Figure 4–23).

The spatial and temporal stability of the expansive and deep stratospheric O_3 reservoir means that assessments of the effects of long-term declines or restoration can reasonably assume that short-term and local-scale variations in important factors such as cloud cover, other pollutants, temperature, population demographics and activity patterns beneath this layer will tend to ''even out'' over time, permitting more confidence in the magnitude and direction of such assessments. In contrast to the stability of the stratospheric O_3 layer, the large spatial and day-to-day variability outlined above for ground-level O_3 means that geographical or temporal variations in other factors such as weather, other pollutants, sensitive population subgroups and human activity patterns may not ''even out'' in particular areas under assessment. Moreover, it is reasonable to assume that the variations in ground-level O_3 are not independent of the variations in many of these other factors. Such variability may have a substantial impact on the outcome of any assessment of the relative effects of a change in ground-level O_3 strategies or standards. This, combined with the many local- and regional-scale interactions among all of these factors, would complicate any such ground-level O_3 assessment.

A few commenters expressed the view that since EPA, and other agencies such as UNEP, have developed quantitative estimates of the public health impacts of relatively large increases in incident UV–B radiation associated with projected changes in the global reservoir of stratospheric O_3, it is necessarily the case that EPA can now develop credible estimates of the public health impacts associated with the relatively very small increases in incident UV–B radiation that could result from changes in ground-level O_3 likely to occur as a

[51] The RAF is defined as the percent increase in effective dose divided by the percent decrease in total column O_3 (Madronich, 1992).

[52] For reasons discussed below, any such shielding would vary widely from day-to-day, even in the summer O_3 season.

[53] This estimated continental background is due in part to natural sources of emissions in North America and in part to the long-range transport of emissions from both anthropogenic and natural sources outside of North America.

[54] Adding to the complexity of understanding this relationship are the results of high-dose animal toxicology studies that suggest more research is needed into the direct effects of ground-level O_3 on the skin. Tests by Thiele *et al.* (1997) suggest that long-term exposure to O_3 can deplete vitamin E in the skin, and this could make the skin more susceptible to the effects of UV–B radiation (U.S. EPA, 1997). Therefore, reducing long-term ground-level O_3 exposure might serve to reduce skin problems. Even a relatively small O_3 effect here could partially or completely offset any small UV–B radiation mediated effect estimated based on O_3—UV–B interactions alone.

result of programs implemented to attain an 8-hour O_3 NAAQS. These commenters further suggest that EPA, in concluding that such estimates can not now be developed with sufficient credibility to serve as a basis for setting a less stringent 8-hour O_3 NAAQS, is treating scientific uncertainty differently than it did when regulating substances that deplete O_3 in the stratosphere. The EPA believes that these commenters are ignoring fundamental differences, discussed above, in the nature and relative magnitude of the temporal and spatial variability of O_3 levels in the stratosphere and at ground-level in the troposphere. The EPA remains convinced that it is entirely reasonable to use available information to make estimates of broad-scale public health impacts in the context of the stratospheric O_3 program, while concluding that such broad-scale analytic approaches necessarily obscure and assume away the localized and highly variable factors that are central to credibly estimating public health impacts in the context of programs designed to attain the O_3 NAAQS.

More specifically, EPA notes that quantitative estimates of public health impacts associated with projected changes in stratospheric O_3 are based primarily on epidemiological studies designed to evaluate impacts of long-term UV–B radiation exposures over broad geographic regions (defined in terms of latitude bands) within which stratospheric O_3 levels exhibit relatively little variability. These types of epidemiological studies are not designed to discern impacts associated with much smaller, and much more highly variable, localized changes in ground-level O_3 that will likely result from programs implemented to attain an 8-hour O_3 NAAQS—such local variations are simply averaged out in these studies that compare average UV–B radiation penetration over broad geographic regions with regional average incidence rates of UV–B radiation-related effects. The EPA believes that in choosing not to apply the same type of approach used to assess stratospheric O_3 impacts to its assessment of NAAQS-related changes in ground-level O_3, that it is treating scientific uncertainty in an appropriate and consistent manner. To do otherwise, as some commenters urge, would be to disregard the uncertainties associated with localized and highly variable changes in UV–B radiation exposure patterns that are central to an assessment of NAAQS-related changes, but that are not relevant to the long-term, regional assessment of stratospheric O_3 impacts. Therefore, EPA rejects the notion advanced by these commenters that the simple application of a stratospheric O_3-type assessment would produce credible quantitative estimates of NAAQS-related impacts for the purpose of weighing against the adverse respiratory-related impacts of ground-level O_3, for which EPA has applied state-of-the-art assessments that appropriately take into account the relevant, highly variable patterns of changes in exposures of concern to ground-level O_3 (as discussed more fully in the following section).

b. Factors Related to Area-Specific Assessment

An enumeration of factors that would be important in assessing the potential UV–B radiation-related consequences of a more stringent O_3 NAAQS in any geographical area serves to illustrate the complexities discussed above. Such UV–B radiation-related factors are analogous, but not equivalent to the factors that were important in the respiratory effects exposure and risk assessments discussed above in section II.A.2. These UV–B radiation-related factors include: the temporal and spatial patterns of ground-level O_3 concentrations throughout a geographic area where reductions are likely to occur, and the variations in O_3 concentrations within a comprehensive set of ''microenvironments'' relevant to UV–B radiation exposures (which are generally different from the microenvironments relevant to O_3 inhalation exposures); the associated temporal and spatial patterns of UV–B radiation flux in such microenvironments; the temporal and spatial patterns of movement of people throughout the UV–B radiation-related microenvironments within the geographic area; and the effects of variable behaviors (*e.g.*, the use of sunscreen, hats, sunglasses) within the range of activities that people regularly engage in, on the effective dose of UV–B radiation that reaches target organs such as the skin.

While analogous to the respiratory-related factors, there are a number of important differences between these sets of factors that arise, for example, due to: (1) The indirect nature of the relationship between changes in ground-level O_3 and UV–B radiation-related health effects (in contrast to the direct relationship between ground-level O_3 and inhalation-related health effects); (2) the long-term nature of the relevant exposures that are associated with UV–B radiation's chronic health effects (in contrast to the short-term exposures associated with acute inhalation effects); (3) the different types of parameters that are relevant to assessing dermal exposures (in contrast to those that are important in assessing inhalation exposures); and (4) the importance of skin type in characterizing the sensitive populations (in contrast to characterizing sensitive populations in terms of activity levels and respiratory health status). Further, as was done in EPA's assessment of respiratory effects, it is important to characterize the exposure-related factors specifically to address the relevant at-risk sensitive population groups. As noted in section II.B.1, the sensitivity to UV–B radiation effects varies among U.S. demographic groups, such that it would be important to incorporate census data on relevant characteristics (*e.g.*, age at time of exposure, skin pigmentation) that affect an individual's susceptibility.

Aspects of each of these factors (including areas where current information or modeling tools are insufficient to address these factors at this time), significant comments received on these factors, and EPA's general responses are discussed briefly below.

(i) Estimation of area-specific and microenvironment changes in ground-level O_3. Implementation of a more stringent O_3 standard would, over time, further reduce O_3 concentrations across many areas within the U.S., but would affect various areas in different ways. Depending on the strategies adopted, in some locations peak concentrations would be reduced significantly during the O_3 season, while the lower concentrations that occur on far more numerous days could increase. In such areas, the long-term cumulative effect could be little net change, or even a small increase in cumulative shielding. In other areas, the entire distribution of O_3 could be reduced. The assessment of the acute respiratory health effects of O_3 appropriately focused on the higher portion of this distribution, using a simple roll-back approach discussed above (section II.A.2.a) to simulate changes in air quality patterns during the O_3 season based on available air quality monitoring data. For assessment of chronic effects such as those associated with UV–B radiation, however, where long-term cumulative exposures are of central importance, the mid to lower portion of the distribution would also be important. Also the distribution across the entire year, for which O_3 monitoring data is not generally available in many parts of the country, could potentially be important. The mid to lower portion of the

distribution is much more strongly influenced by complex atmospheric chemistry and nonanthropogenic sources, such that more sophisticated, area-specific modeling may be needed to estimate changes in this part of the distribution likely to occur as a result of programs designed to attain a more stringent O_3 NAAQS.

In addition, although not relevant to assessing direct respiratory effects, the vertical distribution of O_3 concentrations up through the mixing layer becomes important in assessing the effect of O_3 in shielding UV–B radiation. The current lack of routine vertical profile measurements means that little is known about the relative effect of ground-level control strategies on O_3 in the mixing layer.

With regard to characterizing changes in O_3 concentrations within microenvironments relevant to UV–B radiation exposure, it is clear that this set of microenvironments would differ in some respects from the set of microenvironments that were relevant for respiratory effects. For example, while indoor microenvironments can reduce exposure to both ambient O_3 and UV–B radiation, outdoor microenvironments that are relevant for inhalation exposure do not reflect the characteristics that are important for UV–B radiation exposure. Further, while not relevant to inhalation exposure, microenvironments shaded by the presence of trees, buildings, and other structures in many heavily occupied areas would be important to characterize for UV–B radiation analyses because these microenvironments would tend to have greatly reduced UV–B radiation exposures even when at the same ground-level O_3 concentration as a sunny microenvironment.

A few commenters expressed the view that estimating area-specific changes and microenvironment changes in ground-level O_3 is just as important in conducting exposure and risk assessments for direct respiratory-related effects of ground-level O_3 as it would be in conducting such assessments for UV–B radiation-related effects mediated by changes in ground-level O_3. These commenters further asserted that since EPA was able to estimate area-specific changes and microenvironment changes in ground-level O_3 to conduct the respiratory-related exposure and risk assessments discussed above (section II.A.2), then EPA should also be able to estimate such changes as part of an assessment of UV–B radiation-related exposure and risk. While EPA agrees that these factors are relevant for both types of assessments, EPA does not agree that the same information on area-specific and microenvironment changes is relevant for both types of assessments. The EPA believes that these commenters are ignoring both the important differences, discussed above, in the information needed on area-specific and microenvironment factors to conduct the two types of exposure and risk assessments, and the limitations in the available information.

In particular, EPA's 9-city exposure and risk assessment of acute respiratory health effects of O_3 appropriately focused on the higher portion of the distribution of ground-level O_3 concentrations during the O_3 season, in contrast to an area-specific assessment of chronic UV–B radiation-related effects that would need to focus on the entire distribution of O_3 concentrations, not only at ground-level but extending up throughout the vertical mixing layer, across the entire year. While EPA has available air quality monitoring data sufficient for simulating changes in ground-level O_3 concentrations within the O_3 season associated with attaining a more stringent O_3 NAAQS, data are not generally available for simulating changes throughout the vertical mixing layer (necessary for calculating changes in UV–B radiation penetration to the earth's surface as a function of changes in ground-level O_3 concentration patterns) or for simulating changes beyond the O_3 season (which is only 4 to 5 months in many parts of the country). Further, while data are available on microenvironments relevant to direct inhalation-related exposures, data are not yet available on the different microenvironments relevant to dermal UV–B radiation exposures. Thus, while methodologically analogous, sufficient information is simply not yet available to address these factors as part of an area-specific assessment of UV–B radiation-related exposure and risk mediated by changes in ground-level O_3 associated with programs designed to attain a more stringent O_3 NAAQS.

(ii) Estimation of temporal and spatial patterns of UV–B radiation flux. Relative to the assessment of direct respiratory effects, the assessment of the indirect effect of O_3 shielding on UV–B radiation-related health effects requires the additional step of estimating how changes in the temporal and spatial patterns of O_3 concentrations result in changes in the patterns of UV–B radiation. Given a three-dimensional pattern of O_3 levels, a first-order approximation of UV–B penetration to the earth's surface can be readily made. The factors that influence radiation flux through the stratosphere are fairly well characterized, and most are directly related to the modest changes in stratospheric O_3 and large variations in sun angle that depend on latitude, time of year, and time of day (U.S. EPA, 1987). Nevertheless, beyond these factors, and in addition to changes in ground-level O_3, a number of other (second-order) factors in the boundary layer and the rest of the troposphere can affect the amount of UV–B radiation reaching potentially affected populations. One such factor is cloud cover, which can reduce UV–B radiation reaching the earth's surface by 50 percent or more (Cupitt, 1994). Another such factor is the presence of UV–B radiation scattering and absorbing aerosols. Depending on local circumstances and the NAAQS implementation strategy chosen, aerosol-related UV–B radiation exposure might increase or decrease as a result of ground-level O_3 reductions (U.S. EPA, 1996a, Chapter 3). Both O_3 and aerosols can affect local climate as well as UV–B radiation, and this could affect cloud cover as a further indirect consequence of a reduction strategy. While any such indirect effects might be expected to be small for modest O_3 changes, it is not currently possible to predict the magnitude or the sign of their net effect on UV–B radiation penetration.

A few commenters expressed the view that these types of uncertainties do not preclude a quantitative assessment of exposure and risk related to UV–B radiation, because assessments of environmental risks always include simplifying assumptions. While EPA agrees that simplifying assumptions could be made about these types of second order uncertainties, EPA notes that there is little information available for judging whether any such assumptions were realistic or even plausible. Thus, EPA continues to maintain that having relevant information on these factors would be important in judging the credibility of any area-specific assessment of UV–B radiation-related exposure and risk mediated by changes in ground-level O_3.

(iii) Estimation of temporal and spatial patterns of movement of people throughout microenvironments. While population densities are high in areas with the highest ground-level O_3 concentrations, people may not receive their highest exposure to UV–B radiation in such locations. Reductions in O_3 shielding would presumably be most significant in outdoor recreational areas such as the beach or rural open areas where many people likely receive a disproportionate share of their cumulative sun exposure. Local or

regional meteorological factors can, however, cause ground-level O_3 concentrations to be lower in many such areas, particularly in the western United States. For example, O_3 concentrations in the heavily populated Los Angeles area tend to be lowest at the coast and increase inland; in this case, smog-related O_3 would be providing the least shielding where the potential for exposure to UV–B radiation is the highest. The extensive data base on human activity patterns, which was used in the assessment of respiratory effects, does not generally include parameters that relate to people's movement through the types of outdoor microenvironments that are relevant to the assessment of UV–B radiation exposure.

One comment referenced specific EPA data bases that now contain activity pattern data for limited types of outdoor recreation locations, such as tennis courts and golf courses, suggesting that data are now available to better address human activity patterns in microenvironments relevant to assessing UV–B radiation-related exposures and risk. While EPA recognizes that data bases have recently expanded to include additional relevant human activity information, it also notes that the expanded data bases still fall far short of what would be needed to comprehensively project population activity patterns over time and space—in shaded, partially-shaded, and sunny environments. Additional data are still needed to conduct an exposure analysis that could account for the fraction of UV–B radiation exposure that is incurred, for example, during outdoor recreational activities in various non-shaded or partially-shaded microenvironments. The EPA continues to believe that sufficient data on relevant activity patterns are still not currently available, and that reliable estimation of the change in UV–B radiation exposure associated with reducing ground-level O_3 would be significantly hindered by not taking such factors into account.

(iv) Effects of variable behaviors on effective dose of UV–B radiation. Another important factor to be considered in assessing the potential UV–B radiation-related effects of a change in ground-level O_3 is that human behavior affects UV–B radiation exposures. When people choose to shield themselves from UV–B radiation exposure with clothing and sunscreens, and by timing their outdoor activities to avoid peak sun conditions, they are affecting a parameter that is important in assessing UV–B radiation-related effects. The generally well-known risks associated with too much sun exposure are such that many people limit their own as well as their children's exposure through such measures, regardless of the status of the protective stratospheric O_3 layer or variable amounts of ground-level O_3 pollution. While some sun exposure is generally beneficial to health, limiting excessive sun exposure would remain important for a person's health even if the stratospheric O_3 layer were fully restored to its natural state.[55]

Since sun-seeking or sun-avoidance behaviors can tend to maximize or minimize exposure to UV–B radiation, not factoring such behavioral data into an area-specific exposure assessment would hinder reliable estimation of the increased exposure associated with reducing ground-level O_3. Changes in behavior in the past, specifically increases in sun-seeking behaviors, are believed to be the primary reason for the increases in skin cancer incidence and mortality observed in the U.S. by the 1980's (U.S. EPA, 1987). Conversely, future rates of skin cancer could be reduced to the extent that people choose to change their behavior by increasing sun-avoidance behaviors.

Public awareness of the risks associated with overexposure to UV radiation seems to be having an effect on behavior. In 1987, EPA noted that behaviors causing increased UV–B radiation exposure were apparently reaching an upper limit (U.S. EPA, 1987, ES–35). The effect of increased awareness of the health consequences of UV–B radiation exposure on decreasing the number of harmful exposures is not likely to show up, in terms of reducing the incidence and mortality rates of skin cancers, for many years. Nevertheless, ignoring its effects would tend to bias exposure estimates in an area-specific assessment of the UV–B radiation-related effects of smog reduction strategies.

A few commenters noted that variable behaviors would also affect the assessments of respiratory-related exposure and risk, and that not having such information to assess exposure and risk of UV–B radiation-related effects would not introduce any additional uncertainty beyond what is incorporated in the assessments of respiratory effects. The EPA believes that these commenters are not taking into account the extent to which EPA's respiratory-related exposure and risk analyses did incorporate effects of variable respiratory-related behaviors of people as they move through space and time, and through different microenvironments, in that such behaviors are part of the human activity pattern data base used in those assessments. The human activity pattern data base incorporates respiratory-related parameters derived from human activity studies in which subjects report the types of activity they engage in as a function of location and time throughout the day, which are then linked to variable breathing rates that affect the likelihood that specific O_3 exposures are likely to result in adverse respiratory effects.[56] In contrast, the available human activity pattern data base does not include parameters related to dermal exposures to UV–B radiation, such as time spent in sunny, partially shaded, and shaded locations, nor does it include parameters related to the likelihood that people in sensitive groups exhibit sun-avoidance or sun-seeking behaviors while in such microenvironments. Thus, EPA disagrees with comments asserting either that its respiratory-related exposure and risk analyses did not take into account relevant variable behavior patterns or that there is now sufficient information available on UV–B radiation-related variable behaviors to take such factors into account in an area-specific assessment of UV–B radiation-related exposure and risk mediated by changes in ground-level O_3.

In the proposed response to the remand, EPA specifically solicited comment on the factors related to area-specific assessments of UV–B radiation-related effects that are discussed above (66 FR 57284). Beyond the specific comments on each factor noted above, commenters did not generally challenge the appropriateness of these factors in the development of such area-specific assessments, or the importance of

[55] Because of the high baseline risk of effects under natural conditions, as well as the increased risk posed by stratospheric O_3 depletion, medical authorities and governmental bodies have developed campaigns to effect such changes in behavior. The EPA and the National Weather Service (NWS) developed the UV Index. The Index provides a forecast of the expected risk of overexposure to the sun and indicates the degree of caution that should be taken when working, playing, or exercising outdoors. The EPA also developed the SunWise School Program to be used in conjunction with the UV Index. This program is designed to educate the public, especially children and their care givers, about the health risks associated with overexposure to UV radiation and encourage simple and sensible behaviors that can reduce the risk of sun-related health problems later in life (U.S. EPA, 1995a, b).

[56] The EPA recognizes that these data bases may not contain the most current information on respiratory-related avoidance behaviors that may now be occurring in response to EPA's new Air Quality Index health advisories or local community ozone action day programs. Any such updated information appropriately will be included in analyses conducted as part of the periodic review of the O_3 NAAQS that is now underway.

conducting area-specific assessments. However, as noted above, a few commenters expressed the view that since EPA conducted area-specific quantitative assessments for the inhalation exposure and respiratory effects risk assessments discussed above (section II.A.2), it necessarily has sufficient information about these same factors to conduct such exposure and risk assessments of the potential UV–B radiation-related consequences of a more stringent O_3 NAAQS. These commenters also expressed the view that to the extent that EPA has incorporated these factors in quantitative area-specific assessments of respiratory effects, it should be possible to use the same information on these factors to conduct similar assessments of UV–B radiation-related effects.

While EPA clearly recognizes that the factors that are important in the inhalation exposure and respiratory effects risk assessments are analogous to the factors that would be important to conducting similar assessments of the UV–B radiation-related effects, as discussed above, EPA believes that these commenters are ignoring the important differences between these sets of factors. Although substantial information has been gathered over time regarding factors related to respiratory effects, no such similar research has as yet been done that would provide comparable information related to dermal exposure factors. For the reasons discussed above, EPA rejects the notion advanced by these commenters that simply because there is sufficient information to conduct area-specific quantitative assessments for the inhalation exposure and respiratory effects risk assessment, that such information would be sufficient to conduct exposure and risk assessments of the UV–B radiation-related effects of a more stringent O_3 NAAQS.

Based on the discussion of factors above and consideration of the comments received, EPA continues to believe that more information is needed before credible area-specific quantitative analyses of potential UV–B radiation-related consequences of a more stringent O_3 NAAQS could be conducted.

3. Evaluation of UV–B Radiation-Related Risk Estimates for Ground-level O_3 Changes

As should be clear from the discussion above, a full risk assessment of UV–B radiation-related effects resulting from a moderate change in ground-level O_3 would be an extremely challenging enterprise that appears to be beyond current data and modeling capabilities. Nevertheless, three analyses (Cupitt, 1994; U.S. DOE, 1995; Lutter and Wolz, 1997) have developed estimates that attempt to bound the potential indirect UV–B radiation related effects associated with replacing the former 1-hour O_3 NAAQS with an 8-hour O_3 standard. All three analyses essentially reflect a static comparison of two separate O_3 concentrations on a national basis, and include, either explicitly or implicitly, numerous assumptions needed while excluding the important area-specific issues and factors outlined above.

The most thoroughly documented calculations are those provided in Cupitt (1994), an EPA white paper developed as an initial scoping analysis of the issues, in preparation for potential consideration in the Regulatory Impact Analysis (RIA) that would accompany the O_3 NAAQS regulatory package. This paper discusses many of the important factors and uncertainties outlined above, summarizes key background information to provide perspective, and includes a discussion and table summarizing the many simplifying assumptions that were needed to permit the development of quantitative estimates. Cupitt's analysis evaluates changes resulting from cumulative exposures under two scenarios, including one that compares estimates of NMSC incidence associated with an assumed reduction of daytime summer O_3 of 10 ppb that would occur uniformly throughout 30 eastern States and the District of Columbia and within an assumed atmospheric mixing layer that ranged up to 2 km in altitude. Assuming no other relevant factors changed over the several decade exposure period that would be required, the resulting increase in NMSC incidence for this extreme scenario was estimated eventually to reach ''between 0.6% and 1%.'' While these percentages are small—indeed too small to be measurable (Cupitt, 1994)—if taken at face value, they would not necessarily be judged as trivial because of the large baseline of NMSC. For reasons outlined below, however, even these small percentage estimates appear to be substantially overstated and cannot be considered reliable.

The Cupitt paper was never formally published, but it was subjected to internal agency peer review and commentary by experts at EPA's Office of Research and Development (ORD) (Childs, 1994; Altshuller, 1994). While finding the exposition, including recognition of the difficulties in such an approach, to be ''very acceptable,'' the reviewers noted substantial uncertainties in basic data and expressed concerns about the numerous simplifying assumptions that called the numerical results into significant question. Examples of data uncertainties noted by the reviewers include: (1) The accuracy of column O_3 (in Dobson units) and UV measurements used; (2) the fact, recognized in Cupitt (1994), that the predicted UV–B radiation flux changes are at the ''noise'' level and could not be reliably detected statistically or attributed to the change in ground-level O_3 concentration; (3) data on effects of aerosols are limited, yet ignoring such effects in estimating the O_3—UV–B radiation relationship was ''erroneous;'' and (4) data to permit dynamic assessment of the feedback between increased UV radiation and increased O_3 is limited to uncertain models, and this potential feedback mechanism was ignored in the analysis (Childs, 1994).

Reviewers also questioned a number of the simplifying assumptions that could have ''substantial impact'' on the resulting risk estimates. Among these were: (1) The assumed mixing height of 2 km, which reviewers considered too high on average, especially for the eastern United States—by overstating the thickness of the pollution-related layer of the atmosphere that is the focus of the control strategies designed to attain the NAAQS, this factor would bias the estimates upwards by as much as a factor of 2; (2) the assumption that the O_3 mixing ratio is the same at the earth's surface as it is at 2 km, when the vertical profile varies through the diurnal cycle—because vertical mixing increases through the day, this assumption would be most important in the earlier portion of daylight hours; (3) the assumption that neither aerosols nor O_3 production cycles themselves exert either positive or negative feedback on UV–B penetration—as noted in the previous section, a dynamic consideration of these factors could change the direction of the result in particular areas; (4) the assumption that NMSC might result from episodic exposures, when, in fact, NMSC results from cumulative doses—this assumption affects only separate and far smaller estimates Cupitt made for episodic changes, essentially invalidating those results; (5) the assumption that all people would be susceptible to NMSC based on assumed exposure factors; and (6) the assumption that behavioral patterns, demographic patterns, and meteorological factors and other factors related to actual exposures remain constant over time (Childs, 1994; Altschuller, 1994).

These reviewers capsulized their conclusions regarding the quantitative results of this analysis as follows:

In summary, (1) the numbers resulting from these calculations are quite small, and (2) the limitations of the accuracy and reliability of the input to the calculations produces numbers that cannot be defended, whether large or small. (Childs, 1994).

As noted in the discussion above, this is not simply a matter of uncertain and small risk estimates. On balance, several of the problems noted above served to inflate the overall estimates, and, depending upon local conditions and the implementation strategy assumed, could even call the direction of the results into question for some locations. Further, a significant bias, not highlighted in the cited reviews, is how well the assumed 10 ppb change in daytime O_3 levels averaged over an entire summer season (and over half the U.S.) reflects what might occur in response to the revised O_3 NAAQS.[57] In fact, this assumed change, as well as the assumptions regarding its spatial and vertical extent, are significantly larger than could reasonably be expected based on the revisions to the O_3 standard promulgated in 1997.

To provide a fair comparison, it is necessary to convert the 1-hour standard into its nearest 8-hour equivalent. As documented in the Staff Paper (U.S. EPA, 1996b), the nearest equivalent 8-hour standard would have a level of about 0.09 ppm. Superficially, this might appear to support a 10 ppb difference compared to the 0.08 ppm 8-hour standard set in 1997. The appropriateness of this comparison fades, however, when one considers that these standards are stated in reference to extreme high values in the distribution (*e.g.*, the average of the 4th-highest daily maximum concentrations). Cupitt's analysis assumed that a ''mixing layer'' up to 2 km deep over a very large geographical region would experience a change of 10 ppb in daylight average O_3 for an entire O_3 season. This scenario would require a challenging regional strategy that would, on average, reduce each day for the over 150 day O_3 season by 10 ppb. Yet, the 0.08 ppm 8-hour O3 standard would require that only the fourth-highest day of the O_3 season be reduced by about 10 ppb, as compared to the previous standard. Based on available O_3 trends information, strategies that reduce peak O_3 days would have far less effect on the far more numerous days toward the middle and lower-parts of the O_3 season distribution (*e.g.*, U.S. EPA, 1996a, Figures 4–2, 4–3). In fact, as reported in the Response to Comments document, based on earlier RIA projections of long-term O_3 reductions that might occur as a result of efforts to meet the 0.08 ppm 8-hour O_3 standard, the magnitude of the assumed average change appears to be overstated by more than a factor of 3 (U.S. EPA, 1997). When considered with the excessively high assumed mixing layer, the overly large geographical area requiring reductions (over 30 States), and the assumption that the entire population would be at the same risk as the more sensitive subpopulations, it is EPA's judgment, based on the record, that these readily identified biases could well be on the order of a factor of 10.

More subtle are the uncertainties and potential bias inherent in an essentially static comparison of two different O_3 values that are assumed to be uniform over a very large area. Dynamic, real-world implementation strategies would involve a number of alternative local and regional scale approaches that vary significantly in time and space, with a variety of possible outcomes with respect to the middle and lower portions of the O_3 distribution that are most relevant to estimating long-term summer averages over a period of decades into the future. An example of such local strategy-dependent outcomes would be control of NO_X emissions across a metropolitan area, which could reduce O_3 concentrations at downwind peak monitors, but also result in localized increases in lower concentrations in the center city area (National Academy of Sciences, 1991, Figure 11–2). As noted in section II.B.2 above and in Altshuller (1994), the interrelated indirect results from reduced O_3 and UV–B radiation could trigger feedbacks through increased O_3, aerosol, or cloud cover that could partially or fully offset the initial O_3 effects on UV–B radiation. Available data and assessment tools do not permit a reasonable quantitative assessment of these second- and third-order indirect effects (Altshuller, 1994; Childs, 1994).

Other potential problems associated with ignoring area-specific considerations in an O_3/UV–B risk analysis summarized in the previous section include: (1) The assessment of local physical factors (*e.g.*, buildings) that reduce UV–B radiation exposure in outdoor microenvironments, (2) meteorological conditions (*e.g.*, sea breeze) or local emissions patterns that reduce pollution in high UV–B radiation exposure microenvironments, (3) behavioral adjustments to information concerning UV–B radiation risk over time, and (4) local differences in the proportion of sensitive populations. Even Cupitt's assumption that 90 percent of exposure occurs during the summer O_3 season embeds an additional assumption about long-term personal behavior for which little empirical evidence exists.

In the proposed response, EPA solicited comment on the above discussion of the key assumptions used in the Cupitt analysis (66 FR 57285). None of the commenters disagreed with any specific aspect of EPA's evaluation of these assumptions as outlined in the proposed response, nor did any commenter disagree with EPA's judgement that the assumptions described above could introduce biases on the order of a factor of 10 to Cupitt's estimates of changes in UV–B radiation-related effects resulting from changes in ground-level O_3 projected to occur upon attainment of a more stringent O_3 NAAQS.

In summary, EPA continues to believe that the Cupitt (1994) white paper was useful for its intended purpose as a scoping analysis to identify the potential issues arising in any attempt to assess the potential shielding provided by changes in ground-level O_3. It established that any effects of even fairly large, long-term O_3 reductions in ground-level O_3 would be quite small, but as evidenced in the comments of the peer review and the discussion above, available data and modeling tools fall far short of permitting reliable quantitative risk estimates for consideration in standard setting or benefits assessments.

The analysis of this issue by U.S. Department of Energy (DOE) staff (1995) is summarized in a statement submitted as a part of public comments at a CASAC meeting. The exposition is far less complete than that of Cupitt, and it is quite difficult to reconcile the range of estimates for possible increased occurrences of NMSC, the lower bound of which are less than Cupitt, while the upper bound estimates are more than double his. The analysis apparently starts with the same assumptions regarding a constant change in summertime O_3 of 10 ppb through a 2 km mixing layer, but important information about the other assumptions is lacking. In any event, the paper does not appear to improve upon the methodology in the Cupitt analysis.[58] Given that the DOE

[57] Cupitt provides no rationale for the selection for this value where it first appears in a Table, which is characterized as addressing ''questions from OMB.''

[58] In addition to estimates for NMSC, the DOE statements also provided estimates for melanoma skin cancers and cataracts. As discussed above, the quantitative relationship between cumulative UV–B exposure and the latter effects are not as well established as for NMSC. Given the lack of documentation and the additional uncertainties over those for NMSC, neither the DOE estimates of

Continued

statement must share the limitations outlined above for Cupitt and the fact that the analytical approach is neither well documented nor peer reviewed, no reliance is placed on the quantitative results presented in the DOE submission.

The work of economic analysts Lutter and Wolz (1997) provides a self-described ''preliminary analysis'' of UV–B radiation screening by tropospheric O_3. Here, the exposition permits a more direct comparison with that of Cupitt, and it appears that many of the same simplifying assumptions were used—either explicitly or implicitly. This paper relied upon Cupitt's assumption that the NAAQS revision might bring about a summertime average of 10 ppb reduction in O_3 in areas not attaining the standard. As discussed above, based on the record, EPA believes this substantially overstates the likely effect of the NAAQS revision. Their assumption of a constant mixing ratio for the 10 ppb change that would extend well above the planetary boundary layer, up to 10 km, also introduces upward bias into their upper-bound risk estimates. The resultant apparent dose appears to be a factor of 4 larger than the upper bound used by Cupitt and DOE staff. The other quantitative inputs to the analysis differed to a more modest degree from those used by Cupitt. In the end, the upper bound estimate of possible increased occurrences of NMSC is more than double that of Cupitt, due largely to the unwarranted assumption of a 10 km mixing height.

Again, because the quantitative assessment shares most of the limitations cited above for Cupitt, and actually adds substantial bias in a key assumption, EPA has appropriately placed no reliance on the quantitative risk estimates for NMSC from Lutter and Wolz (1997) or to the secondary estimates derived in the DOE analyses.

In the proposed response to the remand, EPA solicited comment on its evaluation of the three analyses discussed above (66 FR 57286). No commenter offered specific challenges to any technical aspect of EPA's evaluations of the quantitative analyses by Cupitt (1994), DOE (1995), and Lutter and Wolz (1997), as discussed above. Some commenters, however, expressed the general view, presumably despite the limitations of these analyses, that EPA was not justified in ignoring or discounting such evidence of positive effects, or that such analyses could serve as an upper bound on estimated UV–B radiation-related impacts. In sharp contrast, other commenters expressed the view that these analyses were of questionable reliability and did not achieve minimum standards of scientific adequacy appropriate for information to be used as a basis for NAAQS decisions.

In taking all these comments into account, EPA rejects the notion that it has ignored or completely discounted these analyses. On the contrary, EPA has thoroughly reviewed these analyses by examining the methodologies used, the nature and validity of the underlying assumptions, and the resultant uncertainties inherent in the UV–B radiation-related impacts estimated by these analyses. In so doing, EPA has concluded that (1) the methodologies used in these analyses inherently ignore area-specific factors that are important in estimating the extent to which small, variable changes in ground-level O_3 mediate long-term exposures to UV–B radiation (in contrast to the appropriate application of such methodologies that EPA and others have done in estimating the impact of relatively large changes in the stratospheric O_3 reservoir attributable to emissions of O_3-depleting substances); (2) the studies likely substantially overestimate UV–B radiation-related impacts as a result of the biases introduced by the use of specific underlying assumptions, as discussed above; and (3) as a consequence of the first two conclusions, the analyses are not scientifically adequate to be relied upon as a basis for making NAAQS decisions, and they do not provide credible quantitative estimates of UV–B radiation-related impacts that can appropriately be compared to the quantitative estimates of direct adverse respiratory-related impacts that EPA used in part as a basis for its initial NAAQS decision. The EPA believes that its examination of these analyses and their underlying assumptions, together with its examination of the basic science dealing with the atmospheric distribution of O3 and UV–B radiation (section I.C above) and information on the health effects associated with UV–B radiation and the relationship between ground-level O_3 and UV–B radiation exposure (sections II.B.1 and 2 above), does support the conclusion that UV–B radiation impacts mediated by changes in ground-level O_3 associated with attaining a more stringent O_3 NAAQS are likely very small from a public health perspective.

Beyond the comments submitted on the three analyses discussed above, a few commenters also contended that EPA's proposed response was incomplete because it did not consider another draft analysis by Madronich, referred to as a 1997 ''EPA staff assessment'' of UV–B radiation-related health benefits, that had been submitted by EPA to the Office of Management and Budget (OMB) in conjunction with OMB's review of the draft RIA for the O_3 NAAQS. These comments expressed the view that this draft analysis represented a substantial improvement over the earlier analyses of Cupitt (1994), DOE (1995), and Lutter and Wolz (1997) in its approach to estimating potential increases in NMSC associated with State-specific average changes in O_3 concentrations between baseline levels (*i.e.*, ground-level O_3 concentrations current at the time of the analysis) and full attainment of the 1996 proposed O_3 NAAQS. These commenters assert that EPA should now consider the results of this draft analysis, or the results of a new analysis that incorporates further refinements and extensions to the methodology and scope of the Madronich analysis, in its response.

In considering this comment, EPA first notes that the Madronich analysis submitted with the comments has not been appropriately characterized in the comments. The Madronich analysis is not an ''EPA staff assessment,'' but rather it is a draft analysis prepared by a consultant at the request of EPA, to help inform EPA's preparation of the RIA. This draft analysis was not completed, published, or peer reviewed. Moreover, it was judged not to provide an adequate basis for quantifying potential UV–B radiation-related impacts as part of EPA's final RIA, a document that historically includes quantitative estimates of a more speculative nature than those thought to be adequate to consider as a basis for setting a NAAQS. In fact, the final RIA for the 1997 O_3 NAAQS, which was reviewed by other Federal agencies and approved for release by OMB, concluded that the available scientific and technical information, which included the Madronich draft analysis, would not permit reliable quantitative estimates of any potential impact of the more stringent O_3 NAAQS on UV–B radiation-related effects.[59] In summary, the Madronich draft analysis does not represent the type of peer-reviewed

such effects nor the uncritical reliance on them by Lutter and Wolz (1997) should be given quantitative credence.

[59] The EPA also notes that this draft analysis was appropriately not part of the rulemaking record upon which EPA is basing its response. The fact that OMB staff placed this draft analysis in OMB's docket, which includes information related to OMB's review of the RIA, in no way implies that the draft analysis was or should have been part of EPA's rulemaking record.

information that is appropriately relied upon as a basis for NAAQS rulemaking.

Although, for the reasons discussed above, EPA has not relied on the Madronich draft analysis in reaching this final response, the Agency nevertheless has conducted a provisional examination of this draft analysis to assess whether the results of the analysis call into question or are consistent with the conclusions reached in the proposed response. In this draft analysis, Madronich estimates the increases in NMSC that would result from changes in ground-level O_3 from 1997 baseline values to full attainment of the 1996 proposed O_3 NAAQS (*i.e.*, a standard set at 0.08 ppm O_3 with a form based on the 3-year average of the annual third-highest daily maximum 8-hour average concentrations). As an initial matter, and as recognized by some commenters, this draft analysis is based on an inappropriate comparison—then-current air quality versus attainment of the proposed NAAQS. The relevant comparison is between full attainment of the 1979 1-hour 0.12 ppm O_3 standard and full attainment of the 1997 final 8-hour O_3 NAAQS (with a somewhat less stringent form based on the fourth-highest daily maximum 8-hour average concentrations). Thus, the analysis by its design substantially overestimates the relevant projected decreases in O_3 levels likely to result from revising the 1979 O_3 standard (since baseline levels in some areas are substantially above levels that would attain the 1979 1-hour standard), and thus, substantially overestimates projected UV–B radiation-related impacts.

Looking beyond this initial matter, EPA notes that this analysis is based on estimated statewide average changes in O_3 concentrations. Thus, like the three other analyses discussed above, this draft analysis incorporates none of the area-specific factors, discussed in section II.B.2.b above, that EPA considers to be important in developing credible estimates of UV–B radiation-related impacts mediated by the localized and highly variable changes in ground-level O_3 likely to result from attainment of a more stringent O_3 NAAQS. The EPA does not dispute that the draft analysis uses assumptions and models that may well be appropriate for developing credible estimates of UV–B radiation-related impacts mediated by large-scale regional and relatively uniform changes in stratospheric O_3 likely to result from emissions of O_3-depleting substances.[60] But, EPA also recognizes and has fully explained (above in section II.B.2) the important differences in the factors that are central to analyses of UV–B radiation-related impacts that are mediated by changes in stratospheric O_3 versus ground-level O_3—differences that this analysis, and the commenters, simply ignore.

Apart from these area-specific methodological issues, EPA has also provisionally looked at the quantitative estimates of State-by-State annual incidences of NMSC that result from the Madronich draft analysis, yielding a nationwide aggregate estimate of an additional 696 NMSC cases annually, with over half of this estimate coming from the State of California alone.[61] Using the California estimate as an example, EPA has considered the potential impact of various assumptions used in the analysis on the estimated incidences. First, as discussed above, the use of a current baseline comparison would likely substantially overestimate incidences in California in particular, in light of the significant extent to which many areas in California continue to exceed the 1979 1-hour standard. That is, it is likely that decreases in ground-level O_3 from baseline levels to levels that would attain the 1979 1-hour standard would be greater, perhaps much greater, than the additional decreases needed to reach attainment of the 1997 8-hour standard. This bias would also likely affect estimates from other States that contribute a high proportion of the national incidence estimate and that have areas that exceed the 1-hour standard by a significant margin, including, for example, New Jersey, Georgia, and Texas, which together account for approximately 20 percent of the national estimate.

Second, as in the Cupitt analysis, the Madronich analysis assumes that the entire population would be equally susceptible to NMSC based on assumed exposure factors. This assumption would also lead to substantial overestimation of effects, however, based on demographic data from the 2001 Statistical Abstract of the United States and information on sensitive populations (discussed above in section II.B.1).[62]

Third, as noted above, the Madronich draft analysis assumes that attainment of a more stringent O_3 standard will decrease O_3 concentrations and increase UV–B radiation flux equally throughout the State, without taking into account the highly variable and localized patterns of changes in ground-level O_3 likely to result from attainment of the O_3 NAAQS, nor does it take into account the variable exposure patterns of people as they move through various microenvironments and exhibit varying degrees of sun-seeking and sun-avoidance behaviors. However, attainment of a more stringent O_3 standard will not reduce O_3 concentrations equally everywhere, and may not reduce O_3 concentrations at all in locations where people receive their highest exposure to UV–B radiation. As noted above in section II.B.2.b, in the heavily populated Los Angeles area, ground-level O_3 is at its lowest levels thus providing the least shielding along the coast, where the potential for exposure to UV–B radiation is the highest, and it is unlikely that programs designed to bring Los Angeles into attainment with a more stringent standard will result in any significant reductions in coastal O_3 levels. In this regard, some commenters also note that the analysis may also underestimate incidences since the analysis assumes that the entire population of a State will experience changes in O_3 concentrations, and presumably resultant changes in UV–B radiation-related impacts, that reflect a statewide average, thus potentially underestimating changes to the large segments of the population that live in urban areas that would likely experience larger than average changes in ground-level O_3 concentrations. However, given the variable and localized patterns of changes in ground-level O_3 that have been monitored in urban areas, including in some cases significantly lower concentrations in inner cities and higher concentrations in downwind suburban areas, it is not clear the extent to which ignoring such area-specific factors would bias resulting estimates for any given urban area either low or high. These considerations serve to demonstrate the

[60] The EPA notes that the draft analysis estimates changes in radiation levels using a radiative transfer model that has been previously used in a number of O_3 scientific studies and WMO/UNEP international assessments of stratospheric O_3 depletion, and NMSC incidences using information from epidemiologic studies and from studies of action spectrum for induction of skin cancer in mice. The draft analysis assumes national incidence rates of 500,000 BCC cases per year and 100,000 SCC cases per year for the baseline scenario.

[61] Only point estimates are presented in the analysis; no quantitative estimates or even qualitative discussion of the uncertainties in these estimates are presented.

[62] According to the 2000 Census (U.S. Census Bureau, 2001), approximately 47 percent of the population of California is designated as ''white alone.'' While not all ''white'' people are susceptible to skin cancer, this proportion is probably a better estimate of the fairer members of all races and ethnic groups in California that would be more susceptible to NMSC than the entire population.

importance of conducting area-specific assessments, as EPA did in evaluating the adverse respiratory-related impacts likely to result from attaining a more stringent O_3 standard.

Finally, one comment also notes that the Madronich draft analysis considers NMSC, but not other UV–B radiation-related effects, and that EPA should extend this quantitative analysis to estimate incidences of such other effects. The EPA believes that quantitative risk estimates to be used as a basis for NAAQS decision making should not be made based on back-of-the-envelope type approaches, as offered in the comment. Consistent with this view, EPA refrained from developing quantitative risk estimates for a range of adverse respiratory-related effects when it judged that information needed to make credible quantitative estimates was not available.[63] To do otherwise with regard to potential beneficial effects would be to apply a lower information standard than was used to assess adverse effects, which EPA declines to do, consistent with the direction from the Court in its remand to apply the ''same approach,'' including the same (neither higher nor lower) ''information threshold'' to either type of information.

Although the biases and uncertainties outlined above can not be reliably quantified, EPA believes that it is reasonable to presume that any increase in nationwide annual incidences of NMSC associated with attaining a more stringent O_3 standard would likely be substantially smaller than estimated by the draft Madronich analysis. Assuming that it's even as much as one-third of that estimated by Madronich, the EPA judges that a nationwide NMSC incidence rate of this approximate magnitude would be very small from a public health perspective, representing an increase of roughly 0.03 percent in the national baseline incidence rate assumed by Madronich.[64] As to other UV–B radiation-related effects, the Madronich draft analysis provides no basis for the development of credible quantitative estimates of such effects. Having chosen not to rely upon simple ratios to develop quantitative estimates of the ''pyramid of effects'' related to the estimated number of hospital admissions of asthmatics that EPA did quantify in its risk assessment,[65] EPA declines to use any lower information standard, as suggested by a few commenters, in its evaluation of potential beneficial effects.

In summary, EPA has conducted a provisional examination of the Madronich draft analysis, considering the underlying assumptions and methodology as well as the quantitative results and likely uncertainties and biases in the results. Based on this provisional examination, EPA does not believe that this analysis calls into question, but rather is generally consistent with the conclusions reached in its proposed response: That information is not available at this time that will allow for credible quantitative estimates of potential UV–B radiation-related impacts of attaining a more stringent O_3 standard, and that associated changes in UV–B radiation exposures of concern, using plausible but highly uncertain assumptions would likely be very small from a public health perspective.

C. Consideration of Net Adverse Health Effects of Ground-level O_3

In considering the net adverse health effects of ground-level O_3, EPA has focused on characterizing and weighing the comparative importance of the potential indirect beneficial health effects associated with the attenuation of UV–B radiation by ground-level O_3 (section II.B above) and the direct adverse health effects associated with breathing O_3 in the ambient air (section II.A above). The same key factors considered by EPA in its 1997 review of the O_3 standard, and in the proposed response, are again considered here in characterizing the information on potential beneficial effects in the record of the 1997 review and in comments received on the proposed response, and in comparatively weighing this information relative to the direct adverse effects. Beyond quantitative assessments of exposure and risk that were central to EPA's 1997 review, these factors include the nature and severity of the effects, the types of available evidence, the size and nature of the sensitive populations at risk, and the kind and degree of uncertainties in the evidence and assessments. Because of the complexity and multidimensional nature of such a comparison, and because many of the effects, both adverse and beneficial, could not be characterized in terms of quantitative risk estimates, EPA has made no attempt to characterize all the relevant effects or associated risks to public health with a common metric.[66]

The available record information on the potential indirect beneficial health effects associated with ground-level O_3 includes information from studies of health effects caused by exposure to UV–B radiation and studies that focus on the consequences of unnaturally high exposures to UV–B radiation due to depletion of the stratospheric O_3 layer, as well as analyses that attempt to focus specifically on the consequences of assumed changes in tropospheric O_3 levels. The nature and severity of the effects of UV–B radiation exposure on the skin, eye, and immune system are discussed above (section II.B.1), as is the nature of sensitive populations at risk for these effects. These effects, especially on the skin and eye, are generally understood to be associated with long-term cumulative exposure to UV–B radiation and to have long latency periods from cumulative exposures, especially those early in life. People with light skin pigmentation make up the primary at-risk population for effects on the skin, especially for NMSC, while at-risk populations for other effects are not as well understood. For NMSC, uncertainties in the evidence generally

[63] In the 1997 final rule (62 FR 38868), EPA specifically noted that for many O_3 inhalation-related risks to public health, information was too limited to develop quantitative estimates of risk, including: increased nonspecific bronchial responsiveness (related, for example, to aggravation of asthma), decreased pulmonary defense mechanisms (suggestive of increased susceptibility to respiratory infection), and indicators of pulmonary inflammation (related to potential aggravation of chronic bronchitis or long-term damage to the lungs).

[64] This judgment is consistent with the judgment made by EPA with regard to its estimate of the incidence rate of O_3-related hospital admissions of asthmatics in New York City, which was one of many adverse public health effects considered as part of the basis for its 1997 O_3 NAAQS decision. In its 1997 final rule, EPA judged that an annual increase of approximately 40 hospital admissions in New York City alone, representing an increase of about 0.3 percent in total hospital admissions of asthmatics, was ''relatively small from a public health perspective'' (62 FR 38868). An increase in NMSC incidence of roughly 0.03 percent is an order of magnitude lower than the estimated rate of O_3-related hospital admissions of asthmatics, and such hospital admissions would generally represent a more serious health effect than an incidence of NMSC, which can generally be treated in a doctor's office or outpatient facility. The EPA also notes that based on baseline incidence rates reported on the Skin Cancer Foundation Web site, *www.skincancer.org*, submitted by a commenter, this increase in NMSC incidence would be roughly only 0.02 percent.

[65] In its 1997 final rule (62 FR 38868), EPA noted that O_3-related hospital admissions of asthmatics are indicative of a pyramid of much larger numbers of related O_3-induced effects, including respiratory-related hospital admissions among the general population, emergency and outpatient department visits, doctors visits, and asthma attacks and related increased use of medication that are important public health considerations.

[66] A commenter asserted that the Court's direction to consider O_3's net adverse health effect in essence presumes the existence and use of a common metric. The EPA notes that while the Court identified the use of a common metric as one approach that EPA could use, in no way did the Court require EPA to use such an approach, nor does EPA believe that such an approach would provide a more meaningful basis on which to evaluate O_3's net effects.

relate to uncertainties in the relevant action spectra and BAFs, as well as in factors related to characterizing the severity of the different types of NMSC. Based on the record information, for the other effects, the role of UV–B radiation is less well understood (*e.g.,* as to relevant action spectra, BAFs, the nature of exposures of concern), although cumulative exposure to UV–B radiation is thought to play a causal role. These characterizations are derived from the large body of epidemiologic and toxicologic evidence that served as the basis for the reference document by EPA (1987).

The record includes a quantitative assessment conducted by EPA (1987, App. E) of the health risks associated with changes in exposure to UV–B radiation attributable to changes in the stratospheric O_3 layer. This assessment models the relationship between wide-scale changes in global/regional levels of stratospheric O_3, resulting from emissions of O_3 depleting substances with long-atmospheric lifetimes, and changes in UV–B radiation flux as a function of latitude for three broad regions across the United States.[67] As discussed above (section II.B.2), because changes in the stratospheric O_3 layer are relatively uniform across broad regions, varying across the U.S. primarily with latitude, information on localized spatial and temporal patterns of exposure-related variables (*e.g.,* changes in ground-level O_3, meteorological conditions, human activity patterns) are not relevant in producing credible estimates of risk associated with changes in stratospheric O_3. This is in sharp contrast to the nature of the information necessary to produce credible estimates of risk associated with changes in exposures to UV–B radiation projected to result from changes in ground-level O_3 that would be associated with attainment of alternative 8-hour standards for O_3.

An evaluation of the available analyses that have produced estimates of UV–B radiation-related health risks associated with changes in ground-level O_3 and the comments received on them, in section II.B.3 above, identifies major limitations in available information that resulted in the need for the analyses to incorporate broad and unsupportable assumptions. These limitations are particularly important with regard to information on spatial and temporal patterns of changes in ground-level O_3 (across the entire year and extending vertically up through the tropospheric mixing layer) likely to result from various future emission control strategies, relevant meteorological conditions and atmospheric chemistry leading to a cascade of broader indirect effects, and human demographic and activity patterns (*e.g.,* the degree of shading within outdoor microenvironments, and the prevalence of sun-seeking and sun-avoidance behaviors among sensitive groups) likely to affect UV–B radiation-related exposures of concern. For the reasons discussed above, these limitations are judged to be of central importance in any such analysis. Thus, in light of such limitations, and after careful consideration of the comments received, EPA continues to agree with internal and external reviewers, and some commenters, in concluding that the available scientific and technical information would not permit credible quantitative estimates of these potential beneficial effects.[68] Thus, EPA concludes that available analyses based on such limited information cannot serve as credible estimates of potential beneficial effects associated with the presence of ground-level O_3 due to man-made emissions of O_3-forming substances.

Beyond the specific technical comments discussed above in section II.B, several commenters expressed the general view that EPA had inappropriately applied a ''double standard'' in its evaluation of the scientific evidence because it failed to evaluate the protective shielding effects of ground-level O_3 using the same criteria by which it evaluated the adverse respiratory effects. This viewpoint was specifically expressed by one commenter in stating that ''EPA has accepted, often without reservation, scientific evidence purporting to establish the adverse effects of ground-level ozone on respiratory effects. At the same time it has often discounted proffered scientific evidence of the potential benefits of ground-level ozone in screening harmful UV–B radiation.'' (Docket No. A–95–58, VI–C–8, pg. 28) As discussed below, EPA strongly rejects both aspects of this comment. Other commenters expressed the opposite view, finding EPA's approach to be evenhanded in its evaluation of the scientific evidence for potential beneficial and adverse effects, with one commenter noting that EPA ''has never concluded that any allegation or ''evidence'' [of adverse effects], regardless of its preliminary or speculative nature or degree of uncertainty, must be factored into NAAQS decisionmaking.'' (Docket No. A–95–58, VI–C–6, pg. 2)

First, EPA believes that there is ample evidence in the record of the 1997 review of the O_3 NAAQS to invalidate the notion that the Agency uncritically accepts scientific evidence of adverse respiratory effects of ground-level ozone. For example, in considering evidence of adverse respiratory-related effects such as increases in bronchial responsiveness, decrements in alveolar macrophage function, and O_3-induced markers of inflammation and cell damage (as discussed in the 1996 proposed rule, 61 FR 65720–21), EPA judged that there was not sufficient information on dose-response relationships to develop quantitative risk estimates for these acute effects, even in light of the availability of peer-reviewed human exposure studies demonstrating indicators of these effects in humans at quantified exposure levels over quantified time periods (1997 final rule, 62 FR 38868). Similarly, EPA limited the scope of its quantitative risk assessment of acute respiratory-related hospital admissions of asthmatics to just one city (New York City), despite the availability of peer-reviewed studies showing increased admissions in other cities, because it judged that there was not adequate city-specific concentration-response information from epidemiological studies in other cities, that applying the New York City concentration-response information to other cities would introduce too much uncertainty into any such quantitative estimates, or that adequate ambient O_3 monitoring data were not available for other study areas to produce credible estimates of this risk for those cities (EPA, 1996b, pp. 111–112). Further, EPA did not rely on quantitative estimates of other adverse effects that have been related to hospital admissions of asthmatics in published documents submitted by commenters on the 1996 proposed rule (*e.g.,* the ''pyramid of effects'' including hospital admissions among the general population, visits to emergency departments and doctors'

[67] Since the EPA's 1987 risk assessment on stratospheric ozone depletion, numerous changes have been made to the model to reflect the commitments made since 1987 by the United States, under amendments to the Montreal Protocol, for reductions in production of various ozone depleting chemicals and to incorporate more accurately the latest scientific information.

[68] This conclusion was also reached by the Health and Ecological Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis, a part of EPA's Science Advisory Board, in conjunction with their review of ''The Benefits and Costs of the Clean Air Act 1990 to 2010'' (EPA, 1999b), noting that the relevant information ''was very weak and more information is required'' (EPA, 1999a). As one commenter noted, this SAB Council has more recently recommended that in EPA's next periodic prospective analysis of the Act, the Agency's analysis address this issue (Advisory Council for Clean Air Compliance Analysis, 2001).

offices, and increased asthma attacks and use of medication), due to the substantial uncertainties inherent in such ratio-of-effects-based approaches to quantifying risk. Finally, with regard to chronic effects, EPA declined to rely on available evidence, or develop quantitative estimates, of the risk of chronic O_3 respiratory-related morbidity or mortality effects in its 1997 final rule, judging that the evidence was too limited or uncertain, despite arguments by commenters on the 1996 proposed rule that such available, peer-reviewed evidence should be used as a basis for setting a lower 8-hour O_3 standard than the 0.08 ppm standard set by EPA in that rulemaking.

Second, far from discounting proffered scientific evidence of the potential ground-level ozone in screening harmful UV–B radiation, EPA has fully considered all the record evidence on the beneficial shielding effects of ground-level O_3, as well as information received in public comments, as discussed in section II.B above. Moreover, EPA has taken the additional step of provisionally considering the unpublished, Madronich draft analysis (section II.B.3), as submitted by commenters and characterized by them as an improvement over other analyses in the record. Having provisionally considered this analysis, for the reasons discussed above in section II.B, EPA has found that this analysis does not call into question the Agency's conclusions with regard to the lack of credibility of such available analyses or the likelihood that any such beneficial UV–B radiation-related effects are likely very small from a public health perspective. The fact that EPA does not agree with commenters' opinions on these issues does not in any way demonstrate that EPA has simply discounted their proffered evidence of the potential beneficial screening effects of ground-level O_3.

Therefore, EPA rejects the view of some commenters that it applied a double standard in reaching its conclusions about potential UV–B radiation-related effects that may result from a more stringent O_3 NAAQS. In fact, EPA believes that were it to rely upon the available evidence of UV–B radiation-related effects to conclude otherwise, as urged by these commenters, that it then would be applying the very type of double standard that these commenters argue against. If EPA were to have relied upon quantitative risk estimates from draft or preliminary analyses that did not utilize appropriate methods or information to take into account relevant area-specific factors, and that had not been peer-reviewed, it would then be inappropriately applying a double standard in comparing any such UV–B radiation-related risk estimates to the adverse respiratory-related risks estimated in peer-reviewed analyses that were appropriately designed and limited by the availability of credible information and assessment methods.

In setting aside the available quantitative risk analyses, EPA notes that our above evaluation of a number of critical factors in the analyses provides reasons for believing that the public health impacts of any potential beneficial effects associated with ground-level O_3 are likely very small, albeit unquantifiable at this time (sections II.B.2–3). In giving qualitative consideration to the available evidence on potential indirect beneficial effects of ground-level O_3, EPA believes it is appropriate to weigh this information in the context of the body of evidence on adverse effects caused by direct inhalation exposures to ground-level O_3 that formed the basis for the 1997 O_3 primary standard.

As an initial matter, as discussed in the 1997 final rule, the Administrator focused primarily on quantitative comparisons of risk, exposure, and air quality in selecting both the level (62 FR 38867–8) and form (62 FR 38869–72) of the 1997 O_3 primary standard. More specifically, she looked at comparisons of both those risks to public health that can be explicitly quantified in terms of estimated incidences and the size of the at-risk population (*e.g.,* children) likely to experience adverse effects, as well as those for which quantitative risk information is more limited, but for which quantitative estimates of the number of children likely to experience exposures of concern could be developed (as discussed in section II.A.2 above). In considering these comparisons, she recognized that although there were inherent uncertainties in these estimates, the underlying assessments took into account extensive data bases on the spatial and temporal patterns of air quality and directly relevant human activity patterns likely to result in inhalation exposures of concern. Further, the Administrator recognized that the assessment methods were appropriate and state-of-the-art, and that the results should play a central role in her decision.

Beyond the quantitative information on direct adverse effects, with regard to the qualitative evidence suggestive of potential serious, chronic adverse effects on public health associated with long-term inhalation exposures, EPA judged that such information was too uncertain and not well enough understood at the time to serve as the basis for establishing a more restrictive 8-hour standard in terms of either level (62 FR 38868) or form (62 FR 38871). In so doing, EPA understood that further research into potential chronic adverse effects in humans would be continued, and the results considered in the next review (62 FR 38871).

In weighing the available information on potential indirect beneficial effects of ground-level O_3, the EPA considers this information in the same light as the information on potential direct chronic adverse effects associated with long-term inhalation exposures to ground-level O_3. In both instances, the potential health effects are serious and likely to develop over many years, with important periods of exposure likely occurring in childhood. Different population groups are likely affected, however, by these potential adverse and beneficial effects. Urban populations and people with impaired respiratory systems (*e.g.,* people with asthma), who are disproportionately from certain minority groups, are most at-risk for the direct inhalation-related effects, whereas fair-skinned populations are most generally, but not exclusively, at-risk for the indirect beneficial effects related to exposure to UV–B radiation. Although different types of uncertainties are inherent in the record information on these effects, in both cases, the uncertainties related to ground-level O_3 are so great as to preclude the development of credible estimates of the size of the affected population or the probability of the occurrence of such effects.[69] In the case of indirect effects related to ground-level O_3, EPA believes that the use of plausible but unsubstantiated assumptions would likely lead to the conclusion that the potential impacts on public health are likely very small; no such conclusions have yet been drawn with regard to the public health impacts of potential direct chronic adverse effects related to inhalation exposures. After considering these factors and the public comments received, EPA now

[69] Two commenters expressed the view that EPA's analogy of UV–B radiation-related protective effects to chronic respiratory-related adverse effects is flawed because the nature of the uncertainties associated with these two types of effects are different. As discussed more fully in its response to comments (EPA, 2002), EPA explicitly recognizes here that there are different types of uncertainties inherent in the evidence of these effects, but disagrees with the commenter's characterization of these differences and with the view that any such differences in the nature of the uncertainties invalidate the weighing of these types of effects as EPA has done in reaching its conclusions.

concludes that, much like the qualitative evidence on direct adverse effects potentially associated with long-term inhalation exposures, the newly considered available evidence on potential indirect beneficial effects is not well enough understood at this time to serve as the basis for establishing a less restrictive 8-hour standard than was promulgated in 1997. Rather, EPA believes that the most recent evidence and credible analyses of potential long-term, indirect beneficial effects should be considered in the next review in conjunction with the most recent information on long-term, direct adverse effects.

D. Final Response To Remand on the Primary O_3 NAAQS

After carefully considering the scientific information available in the record on adverse effects on public health associated with direct inhalation exposures to O_3 in the ambient air and on the potential for indirect benefits to public health associated with the presence of ground-level O_3 and the resultant attenuation of naturally occurring UV–B radiation from the sun, taking into account the weight of that evidence in assessing the net adverse health effects of ground-level O_3, considering comments received on the proposed response, and for the reasons discussed above, the Administrator is now responding to the remand by reaffirming the 8-hour primary O_3 standard promulgated in 1997. In leaving unchanged the 1997 O_3 standard at this time, the Administrator has fully considered the available information in the record of the 1997 O_3 NAAQS review on potential beneficial health effects of ground-level O_3 using the same approach as for her consideration of the adverse respiratory-related effects, as directed by the Court's remand. Based on such consideration, she has determined that the information linking (a) changes in patterns of ground-level O_3 concentrations likely to occur as a result of programs implemented to attain the 1997 O_3 NAAQS to (b) changes in relevant exposures to UV–B radiation of concern to public health is too uncertain at this time to warrant any relaxation in the level of public health protection previously determined to be requisite to protect against the demonstrated direct adverse respiratory effects of exposure to O_3 in the ambient air.[70] Further, it is the Agency's view that even when using plausible but highly uncertain assumptions about likely changes in patterns of ground-level ozone concentrations, associated changes in UV–B radiation exposures of concern would likely be very small from a public health perspective.

In the past, the Administrator has been confronted with situations where there has been both quantifiable and unquantifiable evidence, and has moved forward with a NAAQS decision. The inability to quantify all related effects does not preclude the Agency from making a NAAQS decision, particularly in situations where there is strong quantifiable evidence of significant adverse health effects. Moreover, in this case, as noted above, EPA believes that while the potential beneficial effects are not quantifiable at this time, they are likely very small from a public health perspective. Accordingly, the Administrator believes it is inappropriate to wait for additional information on such effects prior to responding to this remand.

In determining now that the 0.08 ppm, 8-hour O_3 standard set in 1997 is requisite to protect public health with an adequate margin of safety, the Administrator is finding that such a standard is both necessary and sufficient. Consideration of the potential beneficial effects of ground-level O_3 did not, of course, call into question whether this standard was sufficient to protect against the adverse respiratory-related effects of O_3 addressed in EPA's 1997 final rule. However, it did raise the question as to whether this standard was still necessary to protect against O_3's net effects. Having determined that any potential UV–B radiation-related effects associated with this more stringent standard are likely very small from a public health perspective, and having judged that the evidence of any such effects should be weighed no more heavily in a determination of O_3's net effects than the record evidence on O_3's potential chronic adverse effects, the Administrator has concluded that O_3's net adverse effects necessitate a standard no less stringent than the standard set in EPA's 1997 final rule.[71]

The 0.08 ppm, 8-hour primary standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.08 ppm. Data handling conventions are specified in a new appendix I to 40 CFR part 50, as discussed in the 1996 proposal and 1997 final rule.[72]

As discussed previously, the Administrator recognizes that relevant information on indirect potentially beneficial health effects of ground-level O_3 (as well as information on direct adverse health effects of ground-level O_3) is now available that was not part of the 1997 rulemaking record. In that regard, she notes that the next periodic review of the O_3 NAAQS is now well underway, having been formally initiated by EPA's Office of Research and Development with a call for information (65 FR 57810; September 26, 2000). To ensure that the current review of the O_3 criteria and standards now underway can be based on a comprehensive and current body of relevant scientific information, EPA continues to encourage the submission of new scientific information on the relationships between ground-level O_3, associated attenuation of UV–B radiation and other indirect effects of the presence of O_3 in the ambient air, and effects on public health such as those associated with changes in relevant exposures to UV–B radiation.

The EPA's ongoing review and revision of the O_3 Criteria Document is addressing a number of issues related to indirect potentially beneficial health effects of ground-level O_3. In particular, available information on the role of ground-level O_3 in attenuating solar UV–B radiation is being considered. Attention will be focused on the gaps in information, identified above in section II.B.2, that precluded the development of area-specific quantitative assessments of potential beneficial effects of ground-level O_3. For example, the review is considering the available information related to understanding relevant spatial and temporal patterns in changes in ground-level O_3, and associated spatial and temporal patterns in changes in solar UV–B radiation flux. The review will also consider available information on changes in human exposure to solar UV–B radiation as mediated by changes in ground-level O_3, including information related to characterizing how UV–B radiation exposures of sensitive populations may be affected by human activity patterns and variable sun-seeking and sun-avoidance behaviors. In addition, available information on the nature of health

[70] As noted above, the D.C. Circuit has already upheld EPA's determination that the 0.08 ppm 8-hour O_3 NAAQS was requisite to protect against adverse respiratory effects. *See ATA III,* 283 F.3d at 379.

[71] In so doing, EPA is applying the same decision making standard as it applied in its 1997 final rule, based on the plain meaning of the word ''requisite,'' consistent with the U.S. Supreme Court's decision in *Whitman,* 121 S. Ct. at 911–12, 914.

[72] Subsequent to the 1997 final rule, EPA has promulgated further revisions to 40 CFR part 50 with regard to the applicability of the 1-hour O_3 standards (65 FR 45182; July 20, 2000). In addition, EPA notes that recent legislation addresses the timing of future actions on nonattainment designations with regard to the 8-hour O_3 standards (Pub. L. 106–377, 114 Stat. 1441 (2000)).

effects associated with changes in exposure to UV–B radiation mediated by changes in ground-level O_3 concentrations is being considered. As part of the O_3 Criteria Document, this information will be presented to CASAC and the public for review and comment. Based on the revised O_3 Criteria Document, and taking into account CASAC advice and public comments, EPA will consider the extent to which the available information provides an adequate basis for developing credible quantitative estimates of potential beneficial health effects of ground-level O_3. All such relevant information will be considered in EPA's review of the primary O_3 NAAQS.

III. Rationale for Final Response To Remand on the Secondary O_3 Standard

This notice also presents the Administrator's final response to the remand, reaffirming the 8-hour O_3 secondary standard promulgated in 1997, based on:

(1) Information from the 1997 criteria and standards review that served as the basis for the 1997 secondary O_3 standard, including the scientific information on welfare effects associated with direct exposures to O_3 in the ambient air, with a focus on vegetation effects, and assessments of vegetation exposure, risk, and economic values;

(2) A review of the scientific information in the record of the 1997 review (but not considered as part of the basis for the 1997 standard) on the welfare effects associated with changes in UV–B radiation, the association between changes in ground-level O_3 and changes in UV–B radiation, and predictions of changes in ground-level O_3 levels likely to result from attainment of alternative O_3 standards; and

(3) Consideration of the comments received on the proposed response.

A. Direct Adverse Welfare Effects

As discussed in the 1997 final rule, direct exposures to O_3 have been associated quantitatively and qualitatively with a wide range of vegetation effects such as visible foliar injury, growth reductions and yield loss in annual crops, growth reductions in tree seedlings and mature trees, and effects that can have impacts at the forest stand and ecosystem level. Visible foliar injury can represent a direct loss of the intended use of the plant, ranging from reduced yield and/or marketability for some agricultural species to impairment of the aesthetic value of urban ornamental species. On a larger scale, foliar injury is occurring on native vegetation in national parks, forests, and wilderness areas, and may be degrading the aesthetic quality of the natural landscape, a resource important to public welfare. Growth and yield effects of O_3 have been well documented for numerous species, including commodity crops, fruits and vegetables, and seedlings of both coniferous and deciduous tree species. Although data from tree seedling studies could not be extrapolated to quantify responses to O_3 in mature trees, long-term observational studies of mature trees have shown growth reductions in the presence of elevated O_3 concentrations. Even where these growth reductions are not attributed to O_3 alone, it has been reported that O_3 is a significant contributor that potentially exacerbates the effects of other environmental stresses (*e.g.,* pests). In addition, growth reductions can indicate that plant vigor is being compromised such that the plant can no longer compete effectively for essential nutrients, water, light, and space. When many O_3-sensitive individuals make up a population, the whole population may be affected. Changes occurring within sensitive populations, or stands, if they are severe enough, ultimately can change community and ecosystem structure. Structural changes that alter the ecosystem functions of energy flow and nutrient cycling can alter ecosystem succession.

Based on key studies and other biological effects information reported in the Criteria Document and Staff Paper, it was recognized that peak O_3 concentrations equal to or greater than 0.10 ppm can be phytotoxic to a large number of plant species, and can produce acute foliar injury and reduced crop yield and biomass production. In addition, O_3 concentrations within the range of 0.05 to 0.10 ppm have the potential over a longer duration of creating chronic stress on vegetation that can result in reduced plant growth and yield, shifts in competitive advantages in mixed populations, decreased vigor leading to diminished resistance to pest and pathogens, and injury from other environmental stresses. Some sensitive species can experience foliar injury and growth and yield effects even when O_3 concentrations never exceed 0.08 ppm. Further, the available scientific information supports the conclusion that a cumulative seasonal exposure index is more biologically relevant than a single event or mean index.

To put judgments about these vegetation effects into a broader national perspective, the Administrator has taken into account the extent of exposure of O_3-sensitive species, potential risks of adverse effects to such species, and monetized and non-monetized categories of increased vegetation protection associated with reductions in O_3 exposures. In so doing, the Administrator recognized that markedly improved air quality, and thus significant reductions in O_3 exposures would result from attainment of the 0.08 ppm, 8-hour primary standard. In looking further at the incremental protection associated with attainment of a seasonal secondary standard, she recognized that areas that would likely be of most concern for effects on vegetation, as measured by the seasonal exposure index, would also be addressed by the 0.08 ppm, 8-hour primary standard.

B. Potential Indirect Beneficial Welfare Effects

This section is drawn from the limited information in the record of the 1997 review with regard to the effect of ground-level O_3 on the attenuation of UV–B radiation and potential associated welfare benefits.[73] While this information suggests the potential for effects on plants and aquatic organisms, EPA (1987, ES–40—ES–43) recognizes that relevant studies are limited and the uncertainties are great due in part to problems in study designs, such that quantitative conclusions cannot be drawn.

With regard to effects on vegetation, while some plant cultivars tested in the laboratory were determined to be sensitive to UV–B radiation exposure, these experiments have been shown to inadequately replicate effects in the field, such that they do not reflect the complex interactions between plants and their environment. The only long-term field studies of crops involved soybeans, producing suggestive evidence of reduced yields under conditions simulating changes in total column O_3 over an order of magnitude greater than those projected to occur as a result of changes in ground-level O_3 associated with attainment of the 1997 O_3 NAAQS. Beyond the limited studies of crops, EPA (1987, ES–41) notes that little or no data exist on UV–B radiation effects on trees and other types of natural vegetation, or on possible interactions with pathogens. While it is noted that changes in UV–B radiation levels could alter the results of competition in natural ecosystems, no evidence is available to evaluate this

[73] The information in this section is drawn primarily from the EPA document ''Assessing the Risk of Trace Gasses that Can Modify the Stratosphere'' (U.S. EPA, 1987).

effect. Further, it is recognized that UV–B radiation may both inhibit and stimulate plant flowering, depending on the species and growth conditions. Recognizing that interactions between UV–B radiation and other environmental factors are important in determining potential UV–B radiation effects on plants, EPA (1987, ES–42) notes that extensive, long-term studies would be required to address these interactions.

With regard to effects on aquatic organisms, EPA (1987, ES–42) notes that while initial experiments show that increased UV–B radiation has the potential to harm aquatic life, difficulties in experimental designs and the limited scope of the studies prevent the quantification of potential risks. Some study results suggest that most zooplankton show no effect due to increased exposure to UV–B radiation up to some threshold exposure level, with exposures above such threshold levels eliciting notable effects. For species under UV–B stress, such effects could include reduced time spent at the surface of the water, which is critical for breeding in some species, possibly leading to changes in species diversity. It is also noted that, as do all other living organisms, aquatic biota cope with exposure to UV–B radiation by avoidance, shielding, and repair mechanisms, although uncertainty exists as to the extent to which such mitigation mechanisms would occur (U.S. EPA, 1987, ES–43). It is recognized that determination of UV–B radiation exposure in aquatic systems is complex because of the variable attenuation of UV–B radiation in the water column, and that further research is needed to improve our understanding of how UV–B radiation exposure affects marine species, particularly given their world-wide importance as a source of protein.

With regard to EPA's characterization of UV–B radiation-related effects, one commenter noted that there is now more information about the welfare effects of UV–B radiation than there was in the record of the 1997 review,[74] and asserted that this information is sufficient for the Agency to reach ''rough'' quantitative conclusions about some of these effects. The commenter further expressed the view that the relevant information on UV–B radiation-related effects should be evaluated as part of EPA's air quality criteria and be made subject to CASAC review.

[74] The commenter specifically cited an EPA Web site pertaining to stratospheric O_3 depletion (*http://www.epa.gov/ozone/science/effects.html*), with information on the effects of UV–B radiation on plant growth, aquatic organisms and materials of commercial interest.

Moreover, this commenter suggested that EPA's calling the risks ''potential'' effects in the proposed response is inconsistent with its concluding that such effects are ''real'' in the context of stratospheric O_3 depletion.

The EPA agrees that there is now more information on the effects of UV–B radiation on plants, aquatic ecosystems and materials than was available in the 1997 review, and notes that there is also more information available now on the direct adverse effects of O_3 on vegetation and ecosystems. While EPA agrees that relevant information about the welfare effects of ground-level O_3, including both potential UV–B radiation-related beneficial effects and direct adverse effects, should be evaluated as part of updated air quality criteria, EPA believes that all such updated information should be evaluated during the periodic review of the O_3 criteria and standards that is now underway. A fuller discussion of EPA's procedural approach to responding to the remand, especially with regard to incorporating new information in updated air quality criteria and CASAC review, can be found in the introduction to section II above.

Further, EPA strongly disagrees with the commenter's assertion that currently available information on the effects of stratospheric O_3 depletion is sufficient for developing credible quantitative estimates of UV–B radiation-related effects associated with changes in ground-level O_3 likely to result from attainment of a more stringent O_3 NAAQS. While EPA has developed quantitative estimates of the impacts of relatively large and broadly uniform increases in incident UV–B radiation associated with projected changes in the global reservoir of stratospheric O_3, it is not necessarily the case that EPA can now develop credible estimates of impacts associated with the relatively very small and locally variable increases in incident UV–B radiation that may result from future projected changes in ground-level O_3. The EPA believes that this commenter is ignoring both the fundamental differences in the nature and relative magnitude of the temporal and spatial variability of O_3 levels in the stratosphere and ground-level troposphere, and the importance of area-specific assessments for addressing impacts related to changes in ground-level O_3 that take into account relevant factors (as discussed in section II.B above). Area-specific factors that would be important in assessing the potential for UV–B radiation-related consequences of a more stringent O_3 NAAQS on plants, aquatic ecosystems, and materials in any geographical area are the same or analogous to factors that are important in assessing the impacts on human health. Such factors include the temporal and spatial patterns of ground-level O_3 throughout a geographic area where reductions are likely to occur, the associated temporal and spatial patterns in UV–B radiation flux, and the sensitivity and spatial and temporal exposure patterns of plants, aquatic systems and materials to the relatively very small and highly variable changes in UV–B radiation associated with relevant changes in ground-level O_3.

For example, the commenter specifically noted that new information on the effects of stratospheric O_3 depletion finds that solar UV–B radiation can affect marine ecosystems by damaging the early developmental stages of some marine organisms that, in turn, can result in significant reductions in the size of the populations of larger animals that feed on these animals. Thus for marine ecosystems, increased UV–B radiation is most likely to have an effect over specific geographic areas and during specific periods of time in the life cycles of some marine organisms. This geographic and temporal specificity is not important in estimating the impacts associated with changes in stratospheric O_3, given its relative spatial and temporal stability. Such assessments of the effects of long-term declines or restoration can reasonably assume that short-term and local-scale variations in important factors, such as developmental stages of marine organisms, will tend to ''even out'' over time, permitting more confidence in the magnitude and direction of such assessments. In contrast, such geographic and temporal factors would have a major influence in estimating impacts associated with the localized and highly variable changes in ground-level O_3 associated with attaining a more stringent O_3 NAAQS. In particular, as discussed above in section II.B.2, coastal areas tend to have much lower ground-level O_3 levels relative to inland areas, and there is little evidence to indicate that attaining a more stringent O_3 NAAQS would appreciably change O_3 levels, and associated UV–B radiation penetration, at ground-level over marine ecosystems. Further, the seasonality of ground-level O_3 levels, and efforts to reduce ground-level O_3 to attain a more stringent O_3 NAAQS, would be important to take in account in any credible assessment of impacts of changes in ground-level O_3 levels on the seasonal developmental stages of organisms in marine

ecosystems. This example illustrates why broad-scale analytic approaches appropriately used to estimate stratospheric O_3 impacts are not appropriate for developing credible estimates of the impacts on public welfare of changes in tropospheric O_3 likely to result from attaining a more stringent O_3 NAAQS. Thus, EPA believes that it is not inconsistent to conclude that such quantifiable effects are ''real'' in relation to large, relatively uniform changes in the stratospheric O_3 reservoir, and to characterize effects that can not be credibly quantified in relation to relatively very small and highly variable changes in tropospheric O_3 associated with attaining a more stringent O_3 NAAQS as ''potential'' effects at this time.

C. Final Response To Remand on the Secondary O_3 NAAQS

After considering the scientific information available in the record on adverse welfare effects associated with direct exposure to O_3 in the ambient air and on the potential indirect benefits to public welfare related to attenuation of naturally occurring UV–B radiation, and the relevant comments received, the Administrator again concludes that there is insufficient information available on UV–B radiation-related effects that may result from attaining the 1997 O_3 NAAQS to warrant any relaxation in the level of public welfare protection previously determined to be requisite to protect against the demonstrated direct adverse effects of exposure to O_3 in the ambient air. Thus, the Administrator responds to the remand by reaffirming the 8-hour secondary O_3 standard promulgated in 1997, which is identical to the 8-hour primary O_3 standard.

In determining now that the 0.08 ppm, 8-hour O_3 standard set in 1997 is requisite to protect public welfare, the Administrator is finding that such a standard is both necessary and sufficient. While consideration of the potential beneficial effects of ground-level O_3 clearly did not call into question whether this standard was sufficient to protect against the direct adverse welfare effects of ground-level O_3 addressed in EPA's 1997 final rule, it did raise the question as to whether this standard was still necessary in light of potential UV–B radiation-related beneficial effects. Having determined that any potential UV–B radiation-related welfare effects associated with attaining the 1997 O_3 standard are too uncertain to be given any appreciable weight in balancing against the demonstrated direct adverse effects of ground-level O_3 on vegetation, for which information was sufficient for both quantitative and qualitative assessments that provided the basis for the 1997 secondary O_3 standard, the Administrator has concluded that the weight of evidence of O_3's adverse effects necessitates a standard no less stringent than the standard set in EPA's 1997 final rule.[75]

As recognized in section II.D with regard to consideration of health effects, the Administrator also recognizes that relevant information on indirect potentially beneficial welfare effects of ground-level O_3 is now available that was not part of this rulemaking record. As previously noted, the next periodic review of the O_3 NAAQS has already been initiated by EPA's ORD and preparation of a revised O_3 Criteria Document that will incorporate such relevant information is now underway. Thus, to ensure that the next review of the O_3 criteria and standards can be based on a comprehensive and current body of relevant scientific information, EPA continues to encourage the submission of new scientific information on the relationships between ground-level O_3, associated attenuation of UV–B radiation and other indirect effects of the presence of O_3 in the ambient air, and effects on public welfare such as those associated with changes in relevant exposures to UV–B radiation.

As noted above in section II.D, EPA's ongoing review and revision of the O_3 Criteria Document is addressing a number of issues related to indirect potentially beneficial health effects of ground-level O_3. In addition to the issues noted above, EPA's review will also consider the available information on the nature of environmental effects associated with changes in solar UV–B radiation mediated by changes in ground-level O_3 concentrations. Based on the revised O_3 Criteria Document, and taking into account CASAC and public comments, EPA also will consider the extent to which the available information provides an adequate basis for developing credible quantitative estimates of potential beneficial environmental effects of ground-level O_3. All such relevant information will be considered in EPA's review of the secondary O_3 NAAQS.

[75] In so doing, EPA is applying the same decision making standard as it applied in its 1997 final rule, as noted above in section II.D on the primary standard, based on the plain meaning of the word ''requisite,'' consistent with the U.S. Supreme Court's decision in *Whitman,* 121 S. Ct. at 911–12, 914.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, the Agency must determine whether a regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one 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 or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this response is a ''significant regulatory action'' because of its important national policy implications. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record and made available for public inspection at EPA's Air Docket Center (Docket No. A–95–58).

Since today's final response to the remand is a reaffirmation of the revisions to the O_3 NAAQS previously promulgated in 1997, no new RIA has been prepared. The RIA (1997) prepared in conjunction with the 1997 revision to the O_3 NAAQS is available in the docket, from EPA at the address under ''Availability of Related Information,'' and in electronic form as discussed above in ''Electronic Availability.''

As a number of judicial decisions have made clear, the economic and technological feasibility of attaining ambient standards are not to be considered in setting NAAQS, although such factors may be considered in the development of State plans to implement the standards. *E.g., Whitman,* 531 U.S. at 471 (2001); *ATA I,* 175 F.3d at 1040–1043. Accordingly, although a RIA was prepared for the 1997 decision to revise the O_3 NAAQS, neither that RIA nor the associated contractor reports have been considered in issuing this final response.

B. Paperwork Reduction Act

This action does not impose an information collection burden under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because today's final response to the remand does not establish any new information collection requirements beyond those which are currently required under the Ambient Air Quality Surveillance Regulations in 40 CFR part 58 (OMB #2060–0084, EPA ICR No. 0940.16). Therefore, the requirements of the Paperwork Reduction Act do not apply to today's final action. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

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, small entity is defined as: (1) Any small business, based on the Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. On May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') remanded the O_3 NAAQS to EPA to consider, among other things, any potential beneficial health effects of O_3 pollution in shielding the public from the ''harmful effects of the sun's ultraviolet rays.'' 175 F.3d 1027 (D.C. Cir., 1999). Today's action provides EPA's final response to that aspect of the Court's remand and reaffirms the 1997 primary O_3 NAAQS. Therefore, this rule does not establish any new regulatory requirements affecting small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of 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, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, EPA cannot consider in setting a NAAQS the economic or technological feasibility of attaining ambient air quality standards, although such factors may be considered to a degree in the development of State plans to implement the standards. *See, e.g., Whitman,* 531 U.S. at 471; *ATA I,* 175 F.3d at 1040–43. Accordingly, and for the reasons discussed in the 1996 proposal and 1997 final rule, EPA has determined that the provisions of sections 202, 203, and 205 of the UMRA do not apply to this final action. The EPA acknowledges, however, that any corresponding revisions to associated State implementation plan requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively, might result in such effects. Accordingly, EPA will address unfunded mandates as appropriate when it proposes any revisions to 40 CFR parts 51 and 58.

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.''

Today's final response to the remand 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. The final response to the remand only reaffirms the previously promulgated ozone standard and would not alter the relationship that has existed under the Clean Air Act for 30 years, in which EPA sets NAAQS and the States implement them through submission of SIPs, in accordance with the requirements of the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

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 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 response to the remand, which leaves unchanged the 1997 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.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), requires Federal agencies to ensure that their policies, programs, activities, and standards identify and assess environmental health and safety risks that may disproportionately affect children. To respond to this order, agencies must explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final response is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. However, today's final response to the remand, reaffirming the 1997 primary O_3 NAAQS, specifically takes into account children as the group most at risk to the direct inhalation-related effects of O_3 exposure, and was based on studies of effects on children's health (U.S. EPA, 1996a; U.S. EPA, 1996b) and assessments of children's exposure and risk (Johnson *et al.,* 1994; Johnson *et al.,* 1996a, b; Whitfield *et al.,* 1996; Richmond, 1997). The 1997 revision to the primary O_3 NAAQS was promulgated to provide adequate protection to the public, especially children, against a wide range of direct O_3-induced health effects, including decreased lung function, primarily in children who are active outdoors; increased respiratory symptoms, primarily in highly sensitive individuals; hospital admissions and emergency room visits for respiratory causes, among children and adults with respiratory disease; inflammation of the lung and possible long-term damage to the lungs. This final response to the remand affirming the 1997 primary O_3 NAAQS maintains the level of protection of children's health established by the standard set in 1997. Therefore, today's final action does comply with the requirements of Executive Order 13045.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final response to the remand is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This is because this final response to the remand leaves unchanged the 1997 final rule. Thus, Executive Order 13211 does not apply to this rule.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's final response to the remand does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. 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. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) because it is a reaffirmation of the O_3 NAAQS promulgated in 1997. Nonetheless, EPA will submit a report containing this response and other 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 response in the **Federal Register**. Although this final response is not a major rule, EPA will apply the ''major rule'' restrictions regarding the effective date; thus, the response will be effective 60 days after publication in the **Federal Register**.

V. References

Altschuller, A.P. (1994) Memorandum to L.T. Cupitt re: Addendum to My Review of Your Manuscript ''Calculations of the Impact of Tropospheric Ozone Changes On UV–B Flux and Potential Skin Cancers,'' EPA Docket A–95–58, IV–D–2694, Appendix B 17.

American Thoracic Society. (1985) Guidelines as to what constitutes an adverse respiratory health effect, with special reference to epidemiologic studies of air pollution. American Review of Respiratory Disease. 131: 666–668.

Brühl, C. and Creutzen, P.J. (1989) On the Disproportionate Role of Tropospheric Ozone as a Filter Against Solar UV–B Radiation. Geophys. Res. Letters, 16:703–706. Docket A–95–58, IV–D–2694, Appendix B 10.

Childs, N. (1994) Memorandum to L. Grant re: Relationships of Reductions in Tropospheric Ozone to UV–B Penetration to Earth's Surface, EPA Docket A–95–58, IV–D–2694, Appendix B 16.

Cupitt, L.T. (1994) Draft memorandum, Calculations of the Impact of Tropospheric Ozone Changes on UV–B Flux and Potential Skin Cancers, EPA ORD/AREAL Docket A–95–58, IV–D–2694, Appendix B 2.

Fishman, J.; Watson, C.E.; Larsen, J.C.; and Logan, J.A. (1990) Distribution of Tropospheric Ozone Determined From Satellite Data J. Geophys. Res. 95:3599–3617. Docket A–95–58, IV–D–2694, Appendix B 1.

Frederick, J.E.; Koob, A.E.; Weatherhead, E.C. (1993) Empirical Studies of Tropospheric Transmission in the Ultraviolet: Broadband Measurements. J. Applied Meteorology 32:1883–1892. Docket A–95–58, IV–D–2694, Appendix B 13.

Johnson, T. (1994) Letter report: Enhancements to the pNEM summer camp methodology. Prepared by IT/Air Quality Services for U.S. EPA, Office of Air Quality Planning and Standards (OAQPS); Research Triangle Park, NC, March.

Johnson, T.; Capel, J.; Mozier, J.; McCoy, M. (1996a) Estimation of ozone exposures experienced by outdoor children in nine urban areas using a probabilistic version of NEM. Prepared by IT/Air Quality Services for U.S. EPA, OAQPS; Research Triangle Park, NC, August.

Johnson, T.; Capel, J.; McCoy, M.; Mozier, J. (1996b) Estimation of ozone exposures experienced by outdoor workers in nine urban areas using a probabilistic version of NEM. Prepared by IT/Air Quality Services for U.S. EPA, OAQPS; Research Triangle Park, NC, August.

Johnson, T.; Capel, J.; McCoy, M. (1996c) Estimation of ozone exposures experienced by urban residents using a probabilistic version of NEM. Prepared by IT/Air Quality Services for U.S. EPA, OAQPS; Research Triangle Park, NC, April.

Lutter, R. and Wolz, C. (1997) UV–B Screening by Tropospheric Ozone: Implications for the National Ambient Air Quality Standard. Envir. Sci. Technol. 31:142A–146A. Docket A–95–58, IV–D–2694, Appendix B 7.

Madronich, S. (1992) Implications of Recent Total Atmospheric Ozone Measurements for Biologically Active Ultraviolet Radiation Reaching Earth's Surface, Geophys. Res. Letters 19:37–40. Docket A–95–58, IV–D–2694, Appendix B 8.

Martin, K. (2001) U.S. EPA, OAQPS, Letter to Dr. Philip Hopke, Chairman of the Clean Air Scientific Advisory Committee, dated January 22, 2001. Docket A–95–58, VI–F–1.

Martin, K. (2002) U.S. EPA, OAQPS, Letter to Dr. Philip Hopke, Chairman of the Clean Air Scientific Advisory Committee, dated January 14, 2002. Docket A–95–58, VI–F–2.

National Academy of Sciences (1991) Rethinking the Ozone Problem in Urban and Regional Air Pollution, National Academy Press, Washington, District of Columbia.

Richmond (1997) Supplemental ozone exposure and health risk analyses. Internal memorandum from Harvey M. Richmond to Karen M. Martin, U.S. EPA, AQSSD/OAQPS/OAR, RTP, NC, dated February 11, 1997. Docket No. A–95–58, IV–A–1.

Thiele, J. J.; Traber, M. G.; Tsang, K.; Cross, C. E.; Packer, L. (1997) In vivo exposure to ozone depletes vitamins C and E and induces lipid peroxidation in epidermal layers of murine skin. Free Radical Biol. Med. 23: 385–391.

Thurston, G.D.; Ito, K.; Kinney, P.L.; Lippmann, M. (1992) A multi-year study of air pollution and respiratory hospital admissions in three New York State metropolitan areas: results for 1988 and 1989 summers. Journal of Exposure Analysis and Environmental Epidemiology. 2:429–450.

UNEP (1998) Environmental Effects of Ozone Depletion; Elsevier Science S.A., The Netherlands.

U.S. Census Bureau (2001) Profiles of General Demographic Characteristics 2000. 2000 Census of Population and Housing United States. Table DP–1. Profile of General Demographic Characteristics: 2000, Geographic Area: California, page 1030.

U.S. DOE (1995) Statement of Marvin Frazier at Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel, Public Meeting, March 21, 1995, at 203–218 transcript. Docket A–95–58, IV–D–2694, Appendix B 9.

U.S. EPA (1987) Assessing the Risk of Trace Gases That Can Modify the Stratosphere. Volume 1 Executive Summary, Docket A–95–58, IV–D–2694, Appendix B 4.

U.S. EPA (1995a) Fact sheet: Health Effects of Overexposure to the Sun, EPA 430–F–95–003, Office of Air and Radiation Docket A–95–58, IV–D–2694, Appendix B 5.

U.S. EPA (1995b) Fact sheet: UV Radiation, EPA 430–F–95–003, Office of Air and Radiation Docket A–95–58, IV–D–2694, Appendix B 18.

U.S. EPA (1996a) Air quality criteria for ozone and related photochemical oxidants. Research Triangle Park, NC: Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office; EPA report nos. EPA/600/AP–93/004a–c.

U.S. EPA (1996b) Review of the national ambient air quality standards for ozone: assessment of scientific and technical information. OAQPS staff paper. Research Triangle Park, NC: Office of Air Quality Planning and Standards; EPA report no. EPA–452/R–96–007. Available from: NTIS, Springfield, VA; PB96–203435.

U.S. EPA (1997) Responses to Significant Comments on the 1996 Proposed Rule on the National Ambient Air Quality Standards for Ozone, Office of Air and Radiation Docket A–95–58, V–C–1, July 1997.

U.S. EPA (2002) Responses to Significant Comments on the 2001 National Ambient Air Quality Standards for Ozone: Proposed Response to Remand, Office of Air and Radiation Docket A–95–58, August 2002.

Whitfield, R.G.; Biller, W.F.; Jusko, M.J.; Keisler, J.M. (1996) A probabilistic assessment of health risks associated with short-term exposure to tropospheric ozone. Report prepared for U.S. EPA, OAQPS. Argonne National Laboratory; Argonne, IL.

Wolff, G. T. (1995a) Letter from Chairman of the Clean Air Scientific Advisory Committee to the EPA Administrator, dated November 28, 1995. EPA–SAB–CASAC–LTR–96–002.

Wolff, G. T., (1995b) Letter from Chairman of the Clean Air Scientific Advisory Committee to the EPA Administrator, dated November 30, 1995. EPA–SAB–CASAC–LTR–96–002.

Wolff, G. T., (1996) Letter from Chairman of the Clean Air Scientific Advisory Committee to the EPA Administrator, dated April 4, 1996. EPA–SAB–CASAC–LTR–96–006.

WMO (1998) Scientific Assessment of Ozone Depletion: 1998, Global Ozone Research and Monitoring Project—Report No. 44, published in 1999.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: December 18, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–56 Filed 1–3–03; 8:45 am]

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Federal Register

Monday,
January 6, 2003

Part III

Department of Housing and Urban Development

24 CFR Parts 92, 570, 572, et al.
Participation in HUD Programs by Faith Based Organizations; Providing for Equal Treatment of All HUD Program Participants; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 92, 570, 572, 574, 576, 582, 583, and 585

[Doc. No. FR–4782–P–01]

RIN 2501–AC89

Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of All HUD Program Participants

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise those HUD regulations that impose unwarranted barriers to the participation of faith-based organizations in HUD programs and implement HUD's policy that, within the framework of constitutional church-state guidelines, faith-based organizations should be able to compete on an equal footing with other organizations for HUD funding. HUD supports the participation of faith-based organizations in its programs.

DATES: *Comments Due Date:* March 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for inspection and copying between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Steven Wagner, Director, Center for Faith-Based and Community Initiatives, Department of Housing and Urban Development, Room 10184, 451 Seventh Street, SW., Washington, DC 20410; telephone: (202) 708–2404 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. For program specific information, contact the following offices in HUD's Office of Community Planning and Development: For the HOME Program and the HOPE for Homeownership of Single Family Homes (HOPE 3), Virginia Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, (202) 708–2864; for the Community Development Block Grants Program, Robert Duncan, Office of Block Grant Assistance (202) 708–3587: and for the remaining programs, John Garrity, Office of Special Needs Assistance Programs, (202) 708–4300. (These numbers are not toll-free numbers.) Hearing- or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Faith-based organizations are an important part of the social services network of the United States, offering a multitude of social services to those in need. In addition to places of worship, faith-based organizations may include small nonprofit organizations created to provide one program or multiple services, as well as neighborhood groups formed to respond to a crisis or to lead community renewal. Faith-based groups everywhere, either acting alone or as partners with other service providers and government programs, serve the poor, and help to strengthen families and rebuild communities.

All too often, however, federal policy and programs have not recognized faith-based groups as resources for providing social assistance. Federal, state, and local governments have often imposed barriers to the participation of religious organizations in social service programs, including unwarranted regulatory barriers.

President Bush has directed the federal agencies, including HUD, to take steps to ensure that federal policy and programs are fully open to faith-based community groups in a manner that is consistent with the Constitution. The Administration believes that faith-based groups possess an under-appreciated ability to meet the needs of poor Americans and revitalize distressed neighborhoods. The Administration believes that there should be an equal opportunity for *all* organizations—both faith-based and nonreligious—to participate as partners in federal programs.

As part of these efforts, President Bush issued Executive Order 13198 on January 29, 2001. The Order was published in the **Federal Register** on January 31, 2001 (66 FR 8499). Executive Order 13198 created Centers for Faith-Based and Community Initiatives in five cabinet departments—HUD, Health and Human Services, Education, Labor, and Justice. The Executive Order charged the Centers to identify and eliminate regulatory, contracting, and other programmatic obstacles to the full participation of faith-based and community organizations in the provision of social services by their Departments. This proposed rule is part of HUD's efforts to fulfill its responsibilities under the Executive Order.

II. This Proposed Rule

A. Purpose of Proposed Rule

Consistent with the President's initiative, this proposed rule would revise HUD's regulations to remove unwarranted barriers to the equal participation of faith-based organizations in HUD's programs. The objective of this proposed rule is to ensure that HUD programs are open to all qualified organizations, regardless of their religious character, and to establish clearly the proper uses to which funds may be put, and the conditions for receipt of funding.

B. HUD Program Regulations Amended by Proposed Rule

The proposed rule would amend the regulations for the following HUD programs:

1. HOME Investment Partnerships (24 CFR part 92);
2. Community Development Block Grants (CDBG) (24 CFR part 570);
3. Hope for Homeownership of Single Family Homes (HOPE 3) (24 CFR part 572);
4. Housing Opportunities for Persons with AIDS (HOPWA) (24 CFR part 574);
5. Emergency Shelter Grants (ESG) (24 CFR part 576);
6. Shelter Plus Care (24 CFR part 582);
7. Supportive Housing (24 CFR part 583); and
8. Youthbuild (24 CFR part 585).

C. Proposed Regulatory Amendments

The proposed rule would make the following specific amendments to HUD's regulations for the programs listed above.

1. Participation by Faith-Based Organizations in HUD Programs

The proposed rule would make clear that organizations are eligible to participate in HUD programs without regard to their religious character or affiliation, and organizations may not be excluded from the competition for HUD funds simply because they are religious. Specifically, religious organizations are eligible to compete for funding on the same basis, and under the same eligibility requirements, as all other nonprofit organizations. The federal government, as well as state and local governments administering funds under

HUD programs, are prohibited from discriminating against organizations on the basis of religion or their religious character.

2. Faith-Based Activities

The proposed rule would describe the requirements applicable to all recipient organizations regarding the use of HUD funds for faith-based activities. Specifically, a participating organization may not use direct HUD funds to support inherently religious activities, such as worship, religious instruction, or proselytization. If the organization engages in such activities, the activities must be offered separately, in time or location, from the programs or services funded with HUD assistance, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services. This requirement ensures that HUD funds provided directly to religious organizations are not used to support inherently religious activities. Thus, HUD funds provided directly to a participating organization may not be used, for example, to conduct prayer meetings, studies of sacred texts, or any other activity that is inherently religious.

This restriction does not mean that an organization that receives HUD funds cannot engage in inherently religious activities. It simply means such an organization cannot fund these activities with direct HUD funds. Thus, faith-based organizations that receive HUD funds must take steps to separate, in time or location, their inherently religious activities from the direct HUD-funded services that they offer.

These restrictions on inherently religious activities do not apply where HUD funds are provided to religious organizations as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the secular requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, certificate, or similar funding mechanism that was provided to that individual using HUD funds under a program that is designed to give that individual a choice among providers.

3. Independence of Faith-Based Organizations

The proposed rule clarifies that a religious organization that participates in HUD programs will retain its independence and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use HUD funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HUD-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HUD-funded religious organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. Nondiscrimination in Providing Assistance

The proposed rule clarifies that an organization that participates in a HUD program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief. Accordingly, religious organizations, in providing services funded in whole or in part by HUD, may not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

5. Structures Used for Religious Activities

The proposed rule would also clarify that HUD funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities, such as worship, religious instruction, or prayer. HUD funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the specific HUD program. Where a structure is used for both eligible and inherently religious activities, HUD funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. Assurance Requirements

The proposed rule would remove those provisions of HUD's regulations that require only HUD-funded religious organizations to provide assurances that they will conduct eligible program activities in a manner that is ''free from religious influences.'' HUD imposes no comparable assurance requirements in any other context, and HUD believes it is unfair to require religious organizations alone to provide additional assurances, above and beyond those any other organization is required to provide, that they will comply with HUD requirements. All organizations that participate in HUD programs, including religious ones, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of HUD-funded activities, including those prohibiting the use of direct HUD funds to engage in inherently religious activities. In addition, to the extent that provisions of HUD's regulations disqualify religious organizations from participating in HUD's programs merely because they are motivated or influenced by religious faith to provide social services, the proposed rule removes that restriction, which is inconsistent with governing law.

7. Inapplicability of Executive Order 11246

The proposed rule would also amend the CDBG regulations to provide that Executive Order 11246, regarding equal employment opportunity, and the implementing regulations issued by the Department of Labor at 41 CFR part 60 do not apply to CDBG grantees. By its own terms, the Executive Order applies to government contractors and subcontractors, not grantees.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, requires that federal agencies consult with state and local governments with state and local government officials in the development of regulatory policies with federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from state and local government officials on this proposed rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule would not impose any new costs, or modify existing costs, applicable to HUD grantees. Rather, the purpose of the proposed rule is to remove regulatory prohibitions that currently restrict the equal participation of faith-based organizations (large and small) in HUD's programs. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers for the programs affected by this rule are 14.218, 14.219, 14.225, 14.227, 14.228, 14.231, 14.235, 14.237, 14.238, 14.239, 14.241, 14.243, 14.246, 14.248, 14.512, 14.514, and 14.515.

List of Subjects

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS/HIV, Community facilities, Disabled, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations to read as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

1. The authority citation for 24 CFR part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

2. Revise § 92.257 to read as follows:

§ 92.257 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program. Neither the federal government nor a state or local government receiving funds under HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the HUD-funded programs or services.

(c) A religious organization that participates in the HOME program will retain its independence from federal, state, or local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the HOME program shall not, in providing housing or housing assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

3. In § 92.504, remove paragraph (c)(3)(x) and redesignate paragraph (c)(3)(xi) as paragraph (c)(3)(x).

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

4. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

5. Revise § 570.200(j) to read as follows:

§ 570.200 General policies.

* * * * *

(j) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the CDBG program. Neither the federal government nor a state or local government receiving funds under CDBG programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the CDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the CDBG program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a CDBG-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the CDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) CDBG funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities. CDBG funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

6. Amend § 570.503 as follows:

a. Remove paragraph (b)(6);

b. Redesignate paragraphs (b)(7) and (b)(8) as paragraphs (b)(6) and (b)(7), respectively; and

c. In newly designated paragraph (b)(7)(ii), remove all references to ''paragraph (b)(8)(i) of this section'' and in their place add ''paragraph (b)(7)(i) of this section''.

7. Revise § 570.607 to read as follows:

§ 570.607 Employment and contracting opportunities.

Grantees shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

8. The authority citation for 24 CFR part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

9. Revise § 572.405(d) to read as follows:

§ 572.405 Nondiscrimination and equal opportunity requirements.

* * * * *

(d) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOPE 3 program. Neither the federal government nor a state or local government receiving funds under HOPE 3 programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPE 3 program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the HOPE 3 program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOPE 3 funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPE 3-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPE 3-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the HOPE 3 program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPE 3 funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPE 3 funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPE 3 funds may not exceed the cost of those portions of the acquisition,

construction, or rehabilitation that are attributable to eligible activities.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

10. The authority citation for 24 CFR parts 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

11. Revise § 574.300(c) to read as follows:

§ 574.300 Eligible activities.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOPWA program. Neither the federal government nor a state or local government receiving funds under HOPWA programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the HOPWA program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) An organization that participates in the HOPWA program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOPWA funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide HOPWA-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOPWA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the HOPWA program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) HOPWA funds may not be used for the acquisition, construction or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOPWA funds may be used for the acquisition, construction or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, HOPWA funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

12. The authority citation for 24 CFR part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

13. Revise § 576.23 to read as follows:

§ 576.23 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Emergency Shelter Grants program. Neither the federal government nor a state or local government receiving funds under Emergency Shelter Grants programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Emergency Shelter Grants program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Emergency Shelter Grants program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Emergency Shelter Grants funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Emergency Shelter Grants-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an Emergency Shelter Grants-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the Emergency Shelter Grants program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Emergency shelter grants may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. Emergency shelter grants may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, emergency shelter grants may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities.

PART 582—SHELTER PLUS CARE

14. The authority citation for 24 CFR part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11470b.

15. Revise § 582.115(c) to read as follows:

§ 582.115 Limitations on assistance.

* * * * *

(c) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the S+C program. Neither the federal government nor a state or local government receiving funds under S+C programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the S+C program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the

programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the S+C program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct S+C funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide S+C-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an S+C-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the S+C program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

16. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

17. Revise § 583.150(b) to read as follows:

§ 583.150 Limitations on use of assistance.

* * * * *

(b) *Faith-based activities.* (1) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Supportive Housing Program. Neither the federal government nor a state or local government receiving funds under Supportive Housing programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(2) Organizations that are directly funded under the Supportive Housing Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(3) A religious organization that participates in the Supportive Housing Program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Supportive Housing Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Supportive Housing Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Supportive Housing Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) An organization that participates in the Supportive Housing Program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(5) Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

* * * * *

PART 585—YOUTHBUILD PROGRAM

18. The authority citation for 24 CFR part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

19. Revise § 585.406 to read as follows:

§ 585.406 Faith-based activities.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Youthbuild program. Neither the federal government nor a state or local government receiving funds under Youthbuild programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that are directly funded under the Youthbuild program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the beneficiaries of the HUD-funded programs or services.

(c) A religious organization that participates in the Youthbuild Program will retain its independence from federal, state, or local governments and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Youthbuild Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide Youthbuild Program-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Youthbuild Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) An organization that participates in the Youthbuild program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Youthbuild funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Youthbuild funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious

activities, Youthbuild funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to secular activities.

Dated: December 11, 2002.

Mel Martinez,

Secretary.

[FR Doc. 03–133 Filed 1–3–03; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Monday,
January 6, 2003

Part IV

Department of Education

Institute of Education Sciences; Notice Inviting Applications for Grants to Support Education Research for Fiscal Year (FY) 2003; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.305G, 84.305H, 84.305J, 84.305K, 84.305L, 84.305M, and 84.305W]

Institute of Education Sciences; Notice Inviting Applications for Grants To Support Education Research for Fiscal Year (FY) 2003

SUMMARY: The Director of the Institute of Education Sciences (Institute) announces seven FY 2003 competitions for grants to support educational research. The Director takes this action under the Education Sciences Reform Act of 2002 (Act), Title I of Public Law 107–279. The intent of these grants is to provide national leadership in expanding fundamental knowledge and understanding of education from early childhood education through postsecondary study.

SUPPLEMENTARY INFORMATION *Mission of Institute:* A central purpose of the Institute is to provide parents, educators, students, researchers, policymakers, and the general public with reliable information about educational practices that support learning and improve academic achievement and access to educational opportunities for all students. In carrying out its mission, the Institute provides support for programs of research in areas of demonstrated national need.

Competitions in this notice: The following are the seven competitions in this notice for grants to support educational research in FY 2003:

- Preschool Curriculum Evaluation Research
- Interagency Education Research, in partnership with the National Science Foundation and the National Institutes of Health
- Cognition and Student Learning Research
- Reading Comprehension Research
- Teacher Quality Research
- Effective Mathematics Education Research
- Social and Character Development Research

Organization of Notice: This notice is organized in a way to be helpful to a potential applicant. The notice provides information on eligibility; application availability; data—such as key dates, length of project period, and program contacts—for each competition; indication of intent to apply; and application procedures.

Eligible Applicants: Applicants that have the ability and capacity to conduct scientifically valid research are eligible to apply. Eligible applicants include, but are not limited to, non-profit and for-profit organizations and public and private agencies and institutions, such as colleges and universities.

Request for Applications and Other Information: Information regarding program and application requirements for each of the competitions is contained in the applicable Request for Applications package (RFA), which will be available at the following Web site: *http://www.ed.gov/offices/IES/funding.html.*

The RFAs will be available—

(1) On or before January 6, 2003 for Preschool Curriculum Evaluation Research, Reading Comprehension Research, Cognition and Student Learning Research, and Interagency Education Research;

(2) On or before *January 15, 2003* for Effective Mathematics Education Research, and Social and Character Development Research; and

(3) On or before *February 14, 2003* for Teacher Quality.

Interested potential applicants should check the Web site periodically.

Information regarding selection criteria and review procedures will also be posted at this Web site.

KEY DATES AND CONTACTS

CFDA number and program of research	Due date for optional letter of intent	Deadline for receipt of applications	Project period	For further information contact
84.305J Preschool Curriculum Evaluation Research.	Jan. 24, 2003	Mar. 14, 2003	Up to 48 months	Caroline Ebanks Email: *caroline.ebanks@ed.gov*
84.305W Interagency Education Research.	Jan. 24, 2003	Mar. 14, 2003	Up to 60 months	Mark Constas Email: *mark.constas@ed.gov*
84.305H Cognition and Student Learning Research.	Jan. 29, 2003	Mar. 21, 2003	Up to 36 months	Elizabeth Albro Email: *elizabeth.albro@ed.gov*
84.305G Reading Comprehension Research.	Jan. 30, 2003	Mar. 21, 2003	Up to 36 months	Elizabeth Albro Email: *elizabeth.albro@ed.gov*
84.305M Teacher Quality Research.	Mar. 26, 2003	Apr. 18, 2003	Up to 36 months	Harold Himmelfarb Email: *harold.himmelfarb@ed.gov*
84.305K Effective Mathematics Education Research.	Mar. 6, 2003	Apr. 18, 2003	Up to 48 months	Heidi Schweingruber Email: *heidi.schweingruber@ed.gov*
84.305L Social and Character Development Research.	Mar. 6, 2003	Apr. 25, 2003	Up to 48 months	Tamara Haegerich Email: *tamara.haegerich@ed.gov*

Fiscal Information: Although a final appropriation for FY 2003 has not been enacted, the Institute is inviting applications now, in accordance with the schedule in the preceding chart, so that it may be prepared to make awards following final action by Congress on the Department's appropriation bill. The President's Budget for the Institute for FY 2003 includes sufficient funding for all of the competitions included in this notice. The actual award of grants is pending the availability of funds.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 77, 80, 81, 82, 85, 86 (part 86 applies only to Institutions of Higher Education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.217, 75.219 (except that the Department may select an application for funding without following the applicable procedures if the application was evaluated under the preceding competition of the program; the application rated high enough to deserve selection; and the application was not selected for funding because the application was mishandled by the Department), 75.220 and 75.230.

Letter of Intent: A letter indicating a potential applicant's intent to submit an application is optional, but encouraged, for each application. The letter of intent should be submitted by e-mail by the date listed in the chart included in this notice to the following address: *IES-LOI@asciences.com.* Receipt of the letter of intent will be acknowledged by e-mail.

The letter of intent should not exceed one page in length and should include: (1) A descriptive title and brief description of the research project; (2) the name, institutional affiliation, address, telephone number and e-mail address of the principal investigator(s); and (3) the name and institutional affiliation of any key collaborators.

The letter of intent should also: (1) Indicate the duration of the proposed project; (2) provide an estimated budget request by year and a total budget request; and (3) indicate in the e-mail subject line the RFA number and title of the relevant program of research as indicated at the following Web site: *http://www.ed.gov/offices/IES/funding.html.*

The letter of intent is optional and is not binding on applicants. Moreover, it does not enter into or affect the subsequent review of applications. The information in the optional letter of intent will help Institute staff estimate the potential workload involved in planning the review of applications.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999, (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

We are requiring that applications to the FY 2003 competitions be submitted electronically to the following Web site: *http://ies.asciences.com.* Information on the software to be used in submitting applications is available at the same Web site.

FOR FURTHER INFORMATION CONTACT: The contact person associated with a particular program of research is listed in the chart included in this notice.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the chart included in this notice.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the program contact person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

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Program Authority: 20 U.S.C. 9501 *et seq.* (the ''Education Sciences Reform Act of 2002'', Title 1 of Public Law 107–279, November 5, 2002).

Dated: December 30, 2002.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–160 Filed 1–3–03; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
January 6, 2003

Part V

The President

Notice of January 2, 2003—Continuation of the National Emergency With Respect to Libya

Federal Register
Vol. 68, No. 3
Monday, January 6, 2003

Presidential Documents

Title 3—

The President

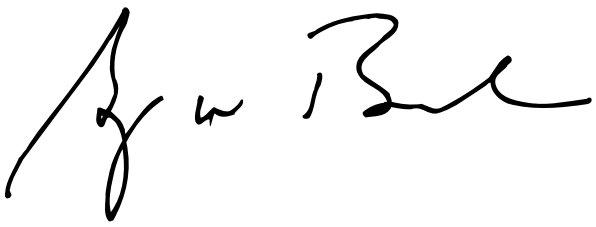
Notice of January 2, 2003

Continuation of the National Emergency With Respect to Libya

On January 7, 1986, by Executive Order 12543, President Reagan declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order 12544, the President took additional measures to block Libyan assets in the United States. The President has transmitted a notice continuing this emergency to the Congress and the **Federal Register** every year since 1986.

The crisis between the United States and Libya that led to the declaration of a national emergency on January 7, 1986, has not been resolved. Despite the United Nations Security Council's suspension of U.N. sanctions against Libya upon the Libyan government's hand-over of the Pan Am 103 bombing suspects, Libya has not yet complied with its obligations under U.N. Security Council Resolutions 731 (1992), 748 (1992), and 883 (1993), which include Libya's obligation to accept respon sibility for the actions of its officials and pay compensation.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 2, 2003.

[FR Doc. 03–312
Filed 1–3–03; 11:03 am]
Billing code 3195–01–P

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Vol. 68, No. 3

Monday, January 6, 2003

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
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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 April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] 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.

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