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U.S. GOVERNMENT
INFORMATION
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Federal Register

9–16–03 Tuesday
Vol. 68 No. 179 Sept. 16, 2003

Pages 54123–54326

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

RIN 3150–AG76

Combustible Gas Control in Containment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for combustible gas control in power reactors applicable to current licensees and is consolidating combustible gas control regulations for future reactor applicants and licensees. The final rule eliminates the requirements for hydrogen recombiners and hydrogen purge systems, and relaxes the requirements for hydrogen and oxygen monitoring equipment to make them commensurate with their risk significance. This action stems from the NRC's ongoing effort to risk-inform its regulations, and is intended to reduce the regulatory burden on present and future reactor licensees. Additionally, the final rule grants in part and denies in part a petition for rulemaking (PRM–50–68) submitted by Mr. Bob Christie. This notice constitutes final NRC action on PRM–50–68. The final rule also denies part of a petition for rulemaking (PRM–50–71) submitted by the Nuclear Energy Institute. The remaining issue in PRM–50–71 that is not addressed by this final rule will be evaluated in a separate NRC action. The NRC has updated a guidance document, ''Control of Combustible Gas Concentrations in Containment'' to address changes in the rule. A draft regulatory guide containing the revisions was published for comment with the proposed rule.

EFFECTIVE DATE: October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Dudley, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1116; e-mail: *rfd@nrc.gov.*

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I. Background

On October 27, 1978 (43 FR 50162), the NRC adopted a new rule, 10 CFR 50.44, specifying the standards for combustible gas control systems. The rule required the applicant or licensee to show that during the time period following a postulated loss-of-coolant accident (LOCA), but prior to effective operation of the combustible gas control system, either: (1) An uncontrolled hydrogen-oxygen recombination would not take place in the containment, or (2) the plant could withstand the consequences of an uncontrolled hydrogen-oxygen recombination without loss of safety function. If neither of these conditions could be shown, the rule required that the containment be provided with an inerted atmosphere to provide protection against hydrogen burning and explosion. The rule defined a release of hydrogen involving up to 5 percent oxidation of the fuel cladding as the amount of hydrogen to be assumed in determining compliance with the rule's provisions. This design-basis hydrogen release was based on the design-basis LOCA postulated by 10 CFR 50.46 and was multiplied by a factor of five for added conservatism to address possible further degradation of emergency core cooling.

The accident at Three Mile Island, Unit 2 involved oxidation of approximately 45 percent of the fuel cladding [NUREG/CR–6197, dated March 1994] with hydrogen generation well in excess of the amounts required to be considered for design purposes by § 50.44. Subsequently, the NRC reevaluated the adequacy of the regulations related to hydrogen control to provide greater protection in the event of accidents more severe than design-basis LOCAs. The NRC reassessed the vulnerability of various containment designs to hydrogen burning, which resulted in additional hydrogen control requirements adopted as amendments to § 50.44. The 1981 amendment, which added paragraphs (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) to the rule, imposed the following requirements:

(1) An inerted atmosphere for boiling water reactor (BWR) Mark I and Mark II containments,

(2) installation of recombiners for light water reactors that rely on a purge or repressurization system as a primary means of controlling combustible gases following a LOCA, and

(3) installation of high point vents to relieve noncondensible gases from the reactor vessel (46 FR 58484; December 2, 1981).

On January 25, 1985 (50 FR 3498), the NRC published another amendment to § 50.44. This amendment, which added paragraph (c)(3)(iv), required a hydrogen control system justified by a suitable program of experiment and analysis for BWRs with Mark III containments and pressurized water reactors (PWRs) with ice condenser containments. In addition, plants with these containment designs must have systems and components to establish and maintain safe shutdown and containment integrity. These systems must be able to function in an environment after burning and detonation of hydrogen unless it is shown that these events are unlikely to occur. The control system must handle an amount of hydrogen equivalent to that generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region.

When § 50.44 was amended in 1985, the NRC recognized that an improved understanding of the behavior of accidents involving severe core damage was needed. During the 1980s and 1990s, the NRC sponsored a severe accident research program to improve the understanding of core melt phenomena, combustible gas generation, transport and combustion, and to develop improved models to predict the progression of severe accidents. The results of this research have been incorporated into various studies (*e.g.*, NUREG–1150 and probabilistic risk assessments performed as part of the Individual Plant Examination (IPE) program) to quantify the risk posed by severe accidents for light water reactors.

The result of these studies has been an improved understanding of combustible gas behavior during severe accidents and confirmation that the hydrogen release postulated from a design-basis LOCA was not risk-significant because it was not large enough to lead to early containment failure, and that the risk associated with hydrogen combustion was from beyond design-basis (*e.g.*, severe) accidents. These studies also confirmed the assessment of vulnerabilities that went into the 1981 and 1985 amendments that required additional hydrogen control measures for some containment designs.

II. Rulemaking Initiation

In a June 8, 1999, Staff Requirements Memorandum (SRM) on SECY–98–300, Options for Risk-informed Revisions to 10 CFR Part 50—''Domestic Licensing of Production and Utilization Facilities,'' the NRC approved proceeding with a study of risk-informing the technical requirements of 10 CFR Part 50. The NRC staff provided its plan and schedule for the study phase of its work to risk-inform the technical requirements of 10 CFR Part 50 in SECY–99–264, ''Proposed Staff Plan for Risk-Informing Technical Requirements in 10 CFR Part 50,'' dated November 8, 1999. The NRC approved proceeding with the plan for risk-informing the Part 50 technical requirements in a February 3, 2000, SRM. Section 50.44 was selected as a test case for piloting the process of risk-informing 10 CFR Part 50 in SECY–00–0086, ''Status Report on Risk-Informing the Technical Requirements of 10 CFR Part 50 (Option 3).''

Mr. Christie of Performance Technology, Inc. submitted letters, dated October 7 and November 9, 1999, that requested changes to the regulations in § 50.44. He requested that the regulations be amended to:

1. Retain the existing requirement in § 50.44(b)(2)(i) for inerting the atmosphere of existing Mark I and Mark II containments.
2. Retain the existing requirement in § 50.44(b)(2)(ii) for hydrogen control systems in existing Mark III and PWR ice condenser containments to be capable of handling hydrogen generated by a metal/water reaction involving 75 percent of the fuel cladding.
3. Require all future light water reactors to postulate a 75 percent metal/water reaction (instead of the 100 percent required by the current rule) for analyses undertaken pursuant to § 50.44(c).
4. Retain the existing requirements in § 50.44 for high point vents.
5. Eliminate the existing requirement in § 50.44(b)(2) to insure a mixed atmosphere in containment.
6. Eliminate the existing requirement for hydrogen releases during design basis accidents of an amount equal to that produced by a metal/water reaction of 5 percent of the cladding.
7. Eliminate the requirement for hydrogen recombiners or purge in LWR containments.
8. Eliminate the existing requirements for hydrogen and oxygen monitoring in LWR containments.
9. Revise GDC 41—Containment Atmosphere Cleanup—to require systems to control fission products and other substances that may be released into the reactor containment for accidents only where there is a high probability that fission products will be released to the reactor containment.

These letters have been treated by the NRC as a petition for rulemaking and assigned Docket No. PRM–50–68. The NRC published a document requesting comment on the petition in the **Federal Register** on January 12, 2000 (65 FR 1829). The issues associated with § 50.44 raised by the petitioner were discussed in SECY–00–0198, ''Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR Part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.44 (Combustible Gas Control).'' The final rule and the petition are consistent in many areas, but differ regarding the functional requirements for hydrogen and oxygen monitoring, the requirement for ensuring a mixed atmosphere, the source term of hydrogen for water-cooled reactors to analyze in order to ensure containment integrity, and the need to revise GDC–41. The NRC's detailed basis for including these requirements in the rule is addressed in a subsequent section of this supplementary information.

The NRC also received a petition for rulemaking filed by the Nuclear Energy Institute. The petition was docketed on April 12, 2000, and has been assigned Docket No. PRM–50–71. The petitioner requests that the NRC amend its regulations to allow nuclear power plant licensees to use zirconium-based cladding materials other than zircaloy or ZIRLO, provided the cladding materials meet the requirements for fuel cladding performance and have received approval by the NRC staff. The petitioner believes the proposed amendment would improve the efficiency of the regulatory process by eliminating the need for individual licensees to obtain exemptions to use advanced cladding materials that have already been approved by the NRC. The change would remove the language in 10 CFR 50.44 regarding the use of zirconium-based cladding materials other than Zircaloy or ZIRLO. The NRC published a document requesting comment on the petition in the **Federal Register** on May 30, 2000 (65 FR 34599). The requested change is unrelated to the risk-informing of 10 CFR 50.44. The NRC addressed the NEI petition in this rulemaking for effective use of resources. Although the final rule does not contain the rule language changes requested by the petitioner, in its revision to 10 CFR 50.44, the NRC eliminated the old language referring to various types of fuel cladding. Thus, the final rule resolves the petitioner's concern regarding § 50.44. The NRC's detailed basis for this decision is addressed in a subsequent section of this supplementary information.

In SECY–00–0198, dated September 14, 2000, the NRC staff proposed a risk-informed voluntary alternative to the current § 50.44. Attachment 2 to that

paper, hereafter referred to as the Feasibility Study, used the framework described in Attachment 1 to the paper and risk insights from NUREG–1150 and the IPE programs to evaluate the requirements in § 50.44. The Feasibility Study found that combustible gas generated from design-basis accidents was not risk-significant for any containment type, given intrinsic design capabilities or installed mitigative features. The Feasibility Study also concluded that combustible gas generated from severe accidents was not risk significant for: (1) Mark I and II containments, provided that the required inerted atmosphere was maintained; (2) Mark III and ice condenser containments, provided that the required igniter systems were maintained and operational, and (3) large, dry and sub-atmospheric containments because of the large volumes, high failure pressures, and likelihood of random ignition to help prevent the build-up of detonable hydrogen concentrations.

The Feasibility Study did conclude that the above requirements for combustible gas mitigative features were risk-significant and must be retained. Additionally, the Feasibility Study also indicated that some mitigative features may need to be enhanced beyond current requirements. This concern was identified as Generic Safety Issue-189 (GI–189). The resolution of GI–189 will assess the costs and benefits of improvements to safety which can be achieved by enhancing combustible gas control requirements for Mark III and ice condenser containment designs. The resolution of GI–189 is proceeding independently of this rulemaking. In an SRM dated January 19, 2001, the NRC directed the NRC staff to proceed expeditiously with rulemaking on the risk-informed alternative to § 50.44.

In SECY–01–0162, ''Staff Plans for Proceeding with the Risk-Informed Alternative to the Standards for Combustible Gas Control Systems in Light-Water-Cooled Power Reactors in 10 CFR 50.44,'' dated August 23, 2001, the NRC staff recommended a revised approach to the rulemaking effort. This revised approach recognized that risk-informing Part 50, Option 3 was based on a realistic reevaluation of the basis of a regulation and the application of realistic risk analyses to determine the need for and relative value of regulations that address a design-basis issue. The result of this process necessitates a fundamental reevaluation or ''rebaselining'' of the existing regulation, rather than the development of a voluntary alternative approach to rulemaking. On November 14, 2001, in response to NRC direction in an SRM dated August 2, 2001, the NRC staff published draft rule language on the NRC Web site for stakeholder review and comment. In an SRM dated December 31, 2001, the NRC directed the staff to proceed with the revision to the existing § 50.44 regulations.

III. Final Action

The NRC is retaining existing requirements for ensuring a mixed atmosphere, inerting Mark I and II containments, and hydrogen control systems capable of accommodating an amount of hydrogen generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region in Mark III and ice condenser containments. The NRC is eliminating the design-basis LOCA hydrogen release from § 50.44 and consolidating the requirements for hydrogen and oxygen monitoring into § 50.44 while relaxing safety classifications and licensee commitments to certain design and qualification criteria. The NRC is also relocating and rewording without materially changing the hydrogen control requirements in § 50.34(f) to § 50.44. The high point vent requirements are being relocated from § 50.44 to a new § 50.46a with a change that eliminates a requirement prohibiting venting the reactor coolant system if it could ''aggravate'' the challenge to containment.

Substantive issues are addressed in the following sections.

A. Retention of Inerting, BWR Mark III and PWR Ice Condenser Hydrogen Control Systems, Mixed Atmosphere Requirements, and Associated Analysis Requirements

The final rule retains the existing requirement in § 50.44(c)(3)(i) to inert Mark I and II type containments. Given the relatively small volume and large zirconium inventory, these containments, without inerting, would have a high likelihood of failure from hydrogen combustion due to the potentially large concentration of hydrogen that a severe accident could cause. Retaining the requirement maintains the current level of public protection, as discussed in Section 4.3.2 of the Feasibility Study.

The final rule retains the existing requirements in § 50.44(c)(3)(iv), (v), and (vi) that BWRs with Mark III containments and PWRs with ice condenser containments provide a hydrogen control system justified by a suitable program of experiment and analysis. The amount of hydrogen to be considered is that generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume). The analyses must demonstrate that the structures, systems and components necessary for safe shutdown and maintaining containment integrity will perform their functions during and after exposure to the conditions created by the burning hydrogen. Environmental conditions caused by local detonations of hydrogen must be included, unless such detonations can be shown unlikely to occur. A significant beyond design-basis accident generating significant amounts of hydrogen (on the order of Three Mile Island, Unit 2, accident or a metal water reaction involving 75 percent of the fuel cladding surrounding the active fuel region) would pose a severe threat to the integrity of these containment types in the absence of the installed igniter systems. Section 4.3.3 of the Feasibility Study concluded that hydrogen combustion is not risk-significant, in terms of the framework document's quantitative guidelines, when igniter systems installed to meet § 50.44(c)(3)(iv), (v), and (vi) are available and operable. The NRC retains these requirements. Previously reviewed and approved licensee analyses to meet the existing regulations constitute compliance with this section. The results of these analyses must continue to be documented in the plant's Updated Final Safety Analysis Report in accordance with § 50.71(e).

The final rule also retains the § 50.44(b)(2) requirement that containments for all currently-licensed nuclear power plants ensure a mixed atmosphere. A mixed containment atmosphere prevents local accumulation of combustible or detonable gases that could threaten containment integrity or equipment operating in a local compartment.

B. Elimination of Design-Basis LOCA Hydrogen Release

The final rule removes the existing definition of a design-basis LOCA hydrogen release and eliminates requirements for hydrogen control systems to mitigate such a release at currently-licensed nuclear power plants. The installation of recombiners and/or vent and purge systems previously required by § 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The NRC finds that this hydrogen release is not risk-significant. This finding is based on the Feasibility Study which found that the design-basis LOCA

hydrogen release did not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. The requirements for combustible gas control that were developed after the Three Mile Island Unit 2 accident were intended to minimize potential additional challenges to containment due to long term residual or radiolytically-generated hydrogen. The NRC found that containment loadings associated with long term hydrogen concentrations are no worse than those considered in the first 24 hours and therefore, are not risk-significant. The NRC believes that accumulation of combustible gases beyond 24 hours can be managed by licensee implementation of the severe accident management guidelines (SAMGs) or other ad hoc actions because of the long period of time available to take such action. Therefore, the NRC eliminates the hydrogen release associated with a design-basis LOCA from § 50.44 and the associated requirements that necessitated the need for the hydrogen recombiners and the backup hydrogen vent and purge systems.

In plants with Mark I and II containments, the containment atmosphere is required to be maintained with a low concentration of oxygen, rendering it inert to combustion. Mark I and II containments can be challenged beyond 24 hours by the long-term generation of oxygen through radiolysis. The regulatory analysis for this proposed rulemaking found the cost of maintaining the recombiners exceeded the benefit of retaining them to prevent containment failure sequences that progress to the very late time frame. The NRC believes that this conclusion would also be true for the backup hydrogen purge system even though the cost of the hydrogen purge system would be much lower because the system also is needed to inert the containment.

The NRC continues to view severe accident management guidelines as an important part of the severe accident closure process. Severe accident management guidelines are part of a voluntary industry initiative to address accidents beyond the design basis and emergency operating instructions. In November 1994, current nuclear power plant licensees committed to implement severe accident management at their plants by December 31, 1998, using the guidance contained in NEI 91–04, Revision 1, ''Severe Accident Issue Closure Guidelines.'' Generic severe accident management guidelines developed by each nuclear steam system supplier owners group includes either purging and venting or venting the containment to address combustible gas control. On the basis of the industry-wide commitment, the NRC is not requiring such capabilities, but continues to view purging and/or controlled venting of all containment types to be an important combustible gas control strategy that should be considered in a plant's severe accident management guidelines.

C. Oxygen Monitoring Requirements

The final rule amends § 50.44 to codify the existing regulatory practice of monitoring oxygen in currently-licensed nuclear power plant containments that use an inerted atmosphere for combustible gas control. Standard technical specifications and licensee technical specifications currently require oxygen monitoring to verify the inerted condition in containment. Combustible gases produced by beyond design-basis accidents involving both fuel-cladding oxidation and core-concrete interaction would be risk-significant for plants with Mark I and II containments if not for the inerted containment atmosphere. If an inerted containment was to become de-inerted during a significant beyond design-basis accident, then other severe accident management strategies, such as purging and venting, would need to be considered. The oxygen monitoring is needed to implement these severe accident management strategies, in plant emergency operating procedures, and as an input in emergency response decision making.

The final rule reclassifies oxygen monitors as non safety-related components. Currently, as recommended by the NRC's Regulatory Guide (RG) 1.97, oxygen monitors are classified as Category 1. Category 1 is defined as applying to instrumentation designed for monitoring variables that most directly indicate the accomplishment of a safety function for design-basis events. By eliminating the design-basis LOCA hydrogen release, the oxygen monitors are no longer required to mitigate design-basis accidents. The NRC finds that Category 2, defined in RG 1.97, as applying to instrumentation designated for indicating system operating status, to be the more appropriate categorization for the oxygen monitors, because the monitors will still continue to be required to verify the status of the inerted containment. Further, the NRC believes that sufficient reliability of oxygen monitoring, commensurate with its risk-significance, will be achieved by the guidance associated with the Category 2 classification. Because of the various regulatory means, such as orders, that were used to implement post-TMI requirements, this relaxation may require a license amendment at some facilities. Licensees would also need to update their final safety analysis report to reflect the new classification and RG 1.97 categorization of the monitors in accordance with 10 CFR 50.71(e).

D. Hydrogen Monitoring Requirements

The final rule maintains the existing requirement in § 50.44(b)(1) for monitoring hydrogen in the containment atmosphere for all currently-licensed nuclear power plants. Section 50.44(b)(1), standard technical specifications and licensee technical specifications currently contain requirements for monitoring hydrogen, including operability and surveillance requirements for the monitoring systems. Licensees have made commitments to comply with design and qualification criteria for hydrogen monitors specified in NUREG–0737, Item II.F.1, Attachment 6 and in RG 1.97. The hydrogen monitors are required to assess the degree of core damage during a beyond design-basis accident and confirm that random or deliberate ignition has taken place. Hydrogen monitors are also used, in conjunction with oxygen monitors in inerted containments, to guide response to emergency operating procedures. Hydrogen monitors are also used in emergency operating procedures of BWR Mark III facilities. If an explosive mixture that could threaten containment integrity exists, then other severe accident management strategies, such as purging and/or venting, would need to be considered. The hydrogen monitors are needed to implement these severe accident management strategies.

The final rule reclassifies the hydrogen monitors as non safety-related components for currently-licensed nuclear power plants. With the elimination of the design-basis LOCA hydrogen release (see Item B. earlier), the hydrogen monitors are no longer required to support mitigation of design-basis accidents. Therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in § 50.2. This is consistent with the NRC's determination that oxygen monitors that are used for beyond-design basis accidents need not be safety grade.

Currently, RG 1.97 recommends classifying the hydrogen monitors in Category 1, defined as applying to instrumentation designed for monitoring key variables that most directly indicate the accomplishment of a safety function for design-basis

accident events. Because the hydrogen monitors no longer meet the definition of Category 1 in RG 1.97, the NRC believes that licensees' current commitments are unnecessarily burdensome. The NRC believes that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of significant beyond design-basis accidents. Category 3 applies to high-quality, off-the-shelf backup and diagnostic instrumentation. As with the revision to oxygen monitoring, this relaxation may also require a license amendment at some facilities. Licensees will also need to update their final safety analysis report to reflect the new classification and RG 1.97 categorization of the monitors in accordance with 10 CFR 50.71(e).

E. Technical Specifications for Hydrogen and Oxygen Monitors

As discussed in III.C and III.D above, the amended rule requires equipment for monitoring hydrogen in all containments and for monitoring oxygen in containments that use an inerted atmosphere. The rule also requires that this equipment must be functional, reliable, and capable of continuously measuring the concentration of oxygen and/or hydrogen in containment atmosphere following a beyond design-basis accident for combustible gas control and severe accident management, including emergency planning. Because of the importance of these monitors for the management of severe accidents, the NRC staff evaluated whether operability and surveillance requirements for these monitors should be included in the technical specifications.

In order to be retained in the technical specifications, the monitors must meet one of the four criteria set forth by 10 CFR 50.36. These criteria are as follows:

1. Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

2. A process variable, design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

3. A structure, system, or component that is part of the primary success path and that functions or actuates to mitigate a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

4. A structure, system or component that operating experience or probabilistic risk assessment has shown to be significant to public health and safety.

As stated in the **Federal Register** notice (60 FR 36953) for the final rule for technical specifications, these criteria were established to address a ''trend toward including in technical specifications not only those requirements derived from the analyses and evaluations included in the safety analysis report but also essentially all other Commission requirements governing the operation of nuclear power plants. This extensive use of technical specifications is due in part to a lack of well-defined criteria (in either the body of the rule or in some other regulatory document) for what should be included in technical specifications.'' As such, the NRC has decided, and established by rule, not to duplicate regulatory requirements in the technical specifications.

Hydrogen and oxygen monitors do not meet criteria 1, 2, or 3 of 10 CFR 50.36 described above. In addition, the Feasibility Study performed by the NRC, and documented in section 4 of Attachment 2 of SECY–00–0198, concluded that the requirement to provide a system to measure the hydrogen concentration in containment does not contribute to the risk estimates for core melt accidents for large dry containments; is not risk significant during the early stages of core melt accidents for Mark I and Mark II containments; and is not risk significant in terms of dealing with the combustion threat of a core melt accident (except for those conditions when the igniters are not operable, *e.g.*, Station Blackout) for Mark III and ice condenser containments. These conclusions were based on the assumptions that Mark I and Mark II containments are inert and hydrogen igniters are operable for Mark III and ice condenser containments. It should be noted that the existing technical specification requirements for hydrogen igniters and for maintaining primary containment oxygen concentration below 4 percent by volume (*i.e.*, inerted), are not being removed; therefore, the conclusions in the Feasibility Study on the risk significance of the hydrogen monitors remain valid. On this basis, the NRC has concluded that hydrogen monitors do not meet criterion 4 of 10 CFR 50.36.

Oxygen monitoring is not the primary means of indicating a significant abnormal degradation of the reactor coolant pressure boundary. Oxygen monitors are used to determine the primary containment oxygen concentration in boiling water reactors. As stated above, the limit for primary containment oxygen concentration for Mark I and II containments will remain in technical specifications; therefore, a technical specification requirement for oxygen monitors would be redundant. In addition, technical specifications for hydrogen igniters for Mark III containments will remain. The oxygen monitors have been shown by probabilistic risk assessment to not be risk-significant. On this basis, the NRC has concluded that oxygen monitors do not meet criterion 4 of 10 CFR 50.36.

The NRC has several precedents regarding not duplicating regulatory requirements for severe accidents in the technical specifications. The Anticipated Transients Without Scram (ATWS) rule, (10 CFR 50.62) requires each pressurized water reactor to have equipment from sensor output to final actuation device, diverse from the reactor trip system, to automatically initiate the auxiliary (or emergency) feedwater system and initiate a turbine trip under conditions indicative of an ATWS. This equipment is required to be designed to perform its function in a reliable manner and has no associated requirements incorporated in the technical specifications. The Station Blackout (SBO) rule, (10 CFR 50.63) requires that each light water reactor must be able to withstand and/or recover from a station blackout event. Section 50.63 also states that an alternate ac power source will constitute acceptable capability to withstand station blackout provided an analysis is performed that demonstrates that the plant has this capability from onset of the station blackout until the alternate ac source and required shutdown equipment are started and lined up to operate. Again, no requirements for the alternate ac source are required to be in technical specifications.

NRC experience with implementation of the above regulations for non safety-related equipment has shown that reliability commensurate with severe accident assumptions is assured without including such equipment in technical specifications. According to the ''Final Report—Regulatory Effectiveness of the Station Blackout Rule'' (ADAMS ACCESSION NUMBER: ML003741781), the reliability of the alternate ac power source has improved after implementation of the SBO rule. It states:

''Before the SBO rule was issued, only 11 of 78 plants surveyed had a formal EDG reliability program, 11 of 78 plants had a unit average EDG reliability less that 0.95, and 2 of 78 had a unit average EDG reliability of less that 0.90. Since

the SBO rule was issued, all plants have established an EDG reliability program that has improved EDG reliability. A report shows that only 3 of 102 operating plants have a unit average EDG reliability less than 0.95 and above 0.90 considering actual performance on demand, and maintenance (and testing) out of service (MOOS) with the reactor at power.''

Therefore, the NRC staff has concluded that requirements for hydrogen and oxygen monitors can be removed from technical specifications. The basis for this conclusion is:

1. These monitors do not meet the criteria of 10 CFR 50.36,
2. The amended 10 CFR 50.44 requires hydrogen and oxygen monitors to be maintained reliable and functional, and
3. The regulatory precedents set by the treatment of other equipment for severe accidents required by 10 CFR 50.62 and 50.63.

F. Combustible Gas Control Requirements for Future Applicants

Section 50.44(c) of the final rule sets forth combustible gas control requirements for all future water-cooled nuclear power reactor designs with characteristics (*e.g.* type and quantity of cladding materials) such that the potential for production of combustible gases is comparable to currently-licensed light-water reactor designs. The NRC's requirements for future reactors previously specified in § 50.34(f)(2)(ix) have been reworded for conciseness but without material change and relocated to § 50.44(c)(2) to consolidate the combustible gas control requirements in § 50.44 for easier reference. This sub-paragraph requires a system for hydrogen control that can safely accommodate hydrogen generated by the equivalent of a 100 percent fuel clad metal-water reaction and must be capable of precluding uniformly distributed concentrations of hydrogen from exceeding 10 percent (by volume). If these conditions cannot be satisfied, an inerted atmosphere must be provided within the containment. The requirements specified in amended § 50.44(c)(2) are applicable to future water-cooled reactors with the same potential for the production of combustible gas as currently-licensed light-water reactor designs and are consistent with the criteria currently contained in § 50.34(f)(2)(ix) to preclude local concentrations of hydrogen collecting in areas where unintended combustion or detonation could cause loss of containment integrity or loss of appropriate accident mitigating features. Additional advantages of providing hydrogen control mitigation features (rather than reliance on random ignition of richer mixtures) include the lessening of pressure and temperature loadings on the containment and essential equipment. These requirements reflect the Commission's expectation that future designs will achieve a higher standard of severe accident performance (50 FR 32138; August 8, 1985).

Section 50.44(d) applies to non-water-cooled reactors and water-cooled reactors that have different characteristics regarding the production of combustible gases from current light-water reactors. Because the specific details of the designs and construction materials used in such future reactors cannot now be known, paragraph (d) specifies a general performance-based requirement that future applicants submit information to the NRC indicating how the safety impacts of combustible gases generated during design-basis and significant beyond design-basis accidents are addressed to ensure adequate protection of public health and safety and common defense and security. This information must be based in part upon a design-specific probabilistic risk assessment. The Commission has endorsed the use of PRAs as a tool in regulatory decisionmaking, see *Use of Probabilistic Risk Assessment Methods in Nuclear Activities: Final Policy Statement* (60 FR 42622, August 16, 1995), and is currently using PRAs as one element in evaluating proposed changes to licensing bases for currently licensed nuclear power plants, see Regulatory Guide 1.174, *An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisionmaking: General Guidance* (July 1998) and Standard Review Plan, Chapter 19, ''Use of Probabilistic Risk Assessment in Plant-Specific, Risk Informed Decisionmaking: General Guidance,'' NUREG–0800 (July 1998). The use of PRA methodologies in determining whether severe accidents involving combustible gas must be addressed by future non-water-cooled reactor designs (and water-cooled designs which have different combustible gas generation characteristics as compared with the current fleet of light-water-cooled reactors) is a logical extension of the NRC's efforts to expand the use of PRAs in regulatory decisionmaking.

At this time, the NRC is not able to set forth a detailed description of, or specific criteria for defining a ''significant'' beyond design-basis accident for these future reactor designs, because the fuel and vessel design, cladding material, coolant type, and containment strategy for these reactor designs are unknown at the time of this final rulemaking. Based in part upon the design-specific PRA, the NRC will determine: (i) What type of accident is considered ''significant'' for each future reactor design, (ii) whether combustible gas control measures are necessary, and if so, (iii) whether the combustible gas control measures proposed for each design provide adequate protection to public health and safety and common defense and security. Although it is impossible at this time to provide a detailed description or criteria for determining what constitutes a ''significant'' beyond design-basis accident for the future reactors that are subject to this provision, the NRC nonetheless believes that the concept of ''significant'' with respect to severe accidents has regulatory precedent which will guide the NRC staff's evaluation of the PRA information for future plants. Section 50.34(f)(2)(ix) of the NRC's current regulations already defines what is in essence the significant beyond design-basis accident which future reactor designs comparable to current light-water reactor designs must be capable of addressing, viz., an accident comparable to a degraded core accident at a current light-water reactor in which a metal-water reaction occurs involving 100 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume). With respect to other ''beyond design-basis'' accidents, the Commission has addressed anticipated transients without scram (ATWS), and station blackout, which are currently regarded as ''beyond design-basis accidents.'' The nuclear power industry, at the behest of the NRC, has developed severe accident management guidelines to provide for a systematized approach for responding to severe accidents during operations. Finally, the Commission has required all nuclear power plant licensees to implement emergency preparedness planning to address the potential for offsite releases of radiation in excess of 10 CFR Part 100 limits. A careful review of these regulatory efforts discloses a common thread: regulatory actions addressing ''beyond design-basis'' accidents have generally been determined based upon a consideration of probability of the accident, together with consideration of the potential scope and seriousness of the health and property value impacts to the general public. Thus, it is possible to set forth a high-level conceptual description of a ''significant'' beyond design-basis accident involving combustible gas for which the

Commission intends for future non-water-cooled reactor designers to address. First, such an accident would have relatively low probability of occurrence, based upon the PRA, but would not be so small that the accident would be deemed incredible. Second, a ''significant'' beyond design-basis accident involving combustible gas would have serious offsite consequences for the public, involving the potential for death or significant acute or chronic health effects to the general public and/or significant radioactive contamination of offsite property which could result in permanent or long-term commitment of property to nuclear use. Such accidents would typically call for activation of offsite emergency preparedness measures in order to mitigate the adverse effects on public health and safety.

The NRC is currently preparing a Draft Regulatory Guide DG–1122 for public comment, in which the terms, ''significant sequences'' and ''significant contributors'' are expected to be addressed. In addition, as part of the proposed rulemaking for risk-informing 10 CFR § 50.46 the Commission has instructed the NRC staff to develop suitable metrics for determining the appropriate risk cutoff for defining the maximum LOCA size. The metrics are to take into account the uncertainties inherent in development of PRAs. The NRC expects that these regulatory activities will ultimately result in more detailed examples of the ''significant beyond design-basis'' concept to assist a potential applicant in developing the design for a future non-water-cooled reactor (and water-cooled reactor designs which are significantly different in concept from current light-water-cooled reactors), and to guide the NRC's review of an application involving such a design.

G. Clarification and Relocation of High Point Vent Requirements From 10 CFR 50.44 to 10 CFR 50.46a

The final rule removes the current requirements for high point vents from § 50.44 and transfers them to a new § 50.46a. The NRC is relocating these requirements because high point vents are relevant to emergency core cooling system (ECCS) performance during severe accidents, and the final § 50.44 does not address ECCS performance. The requirement to install high point vents was adopted in the 1981 amendment to § 50.44. This requirement permitted venting of noncondensible gases that may interfere with the natural circulation pattern in the reactor coolant system. This process is regarded as an important safety feature in accident sequences that credit natural circulation of the reactor coolant system. In other sequences, the pockets of noncondensible gases may interfere with pump operation. The high point vents could be instrumental for terminating a core damage accident if ECCS operation is restored. Under these circumstances, venting noncondensible gases from the vessel allows emergency core cooling flow to reach the damaged reactor core and thus, prevents further accident progression.

The final rule amends the language in § 50.44(c)(3)(iii) by deleting the statement, ''the use of these vents during and following an accident must not aggravate the challenge to the containment or the course of the accident.'' For certain severe accident sequences, the use of reactor coolant system high point vents is intended to reduce the amount of core damage by providing an opportunity to restore reactor core cooling. Although the release of noncondensible and combustible gases from the reactor coolant system will, in the short term, ''aggravate'' the challenge to containment, the use of these vents will positively affect the overall course of the accident. The release of any combustible gases from the reactor coolant system has been considered in the containment design and mitigative features that are required for combustible gas control. Any reactor coolant system venting is highly unlikely to affect containment integrity; however, such venting will reduce the likelihood of further core damage. Because overall plant safety is increased by venting through high point vents, the final rule does not include this statement in § 50.46a.

H. Elimination of Post-Accident Inerting

The final rule no longer provides an option to use post-accident inerting as a means of combustible gas control. Although post-accident inerting systems were permitted as a possible alternative for mitigating combustible gas concerns after the accident at Three Mile Island, Unit 2, no licensee has implemented such a system to date. Concerns with a post-accident inerting system include increase in containment pressure with use, limitations on emergency response personnel access, and cost. Sections 50.44(c)(3)(iv)(D) and 50.34(f)(ix)(D) of the former rule were adopted to address these concerns. On November 14, 2001, draft rule language was made available to elicit comment from interested stakeholders. The draft rule language recommended eliminating the option to use post-accident inerting as a means of combustible gas control and asked stakeholders if there was a need to retain these requirements. Stakeholder feedback supported elimination of the post-accident inerting option and indicated that licensees do not intend to convert existing plants to use post-accident inerting. Because there is no need for the regulations to support an approach that is unlikely to be used, the NRC has decided to eliminate post-accident inerting requirements in the final rule.

IV. Comments and Resolution on Proposed Rule and Draft Regulatory Guide

The 60-day comment period for the proposed rule closed on October 16, 2002. The NRC received 14 letters, from 14 commenters, containing approximately 43 comments on the proposed rule and draft regulatory guide. Seven of the commenters were licensees, two were vendors, two were representatives of utility groups (the Nuclear Energy Institute and the Nuclear Utility Group on Equipment Qualification), two were private citizens, and one was a citizen group, Nuclear Information and Resource Service. All comments were considered in formulating the final rule. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland 20852.

Documents created or received at the NRC after October 16, 2002, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These same documents also may be viewed and downloaded electronically via the interactive rulemaking Web site established by NRC for this rulemaking at *http://ruleforum.llnl.gov*.

The following sections set forth the resolution of the public comments.

A. General Comments

Many commenters expressed strong support for the rule to improve the regulations in § 50.44 and ''commend[ed] the NRC for developing a rule based on risk-informed and performance-based insights that would eliminate unnecessary regulatory requirements.'' One industry commenter indicated that this rule will enhance public health and safety because it increases the reliability of the hydrogen and oxygen monitoring systems. The Advisory Committee on Reactor

Safeguards (ACRS) stated that the draft proposed rulemaking for risk-informed revisions to 10 CFR 50.44 will provide more effective and efficient regulation to deal with combustible gases in containments.

The NRC also received feedback on several issues for which comments were specifically requested in the draft rule language. The existing rule provides detailed, prescriptive instructions using American Society of Mechanical Engineers (ASME) references for analyzing the performance of boiling water reactor (BWR) Mark III and pressurized water reactor (PWR) ice condenser containments. In the final rule, the NRC has provided an option for a more performance-based approach, which received positive public comment. Based upon stakeholder input, the final rule eliminates the existing references to ASME standards and other prescriptive requirements. The regulatory guide attached to this paper includes the ASME approach as one in which the intent of the regulations could be satisfied.

One private citizen questioned why the NRC was considering relaxing requirements that provide protection against some of the uncertainties and hazards of nuclear power. A citizen group opposed the changes by contending that eliminating the design-basis accident release, relaxing safety classifications, and relaxing licensee commitments to certain design and qualification criteria only benefits the money interests of the licensees. This group also stated its belief that the NRC's reliance on limited Three Mile Island (TMI) data points was insufficient to relax requirements solely to accommodate industry cost cutting strategies.

The NRC is moving to risk-informed, performance-based regulation that takes into account the benefits and consequences of actions by licensees and the NRC. One of the benefits of risk-informed regulation is that it concentrates resources on areas that are more important and minimizes resource allocation on areas that are shown to be less significant. As part of the basis for deciding the level of importance of various areas, during the 1980s and 1990s, the NRC sponsored a severe accident research program to improve the understanding of core melt phenomena, combustible gas generation, transport, and combustion, and to develop improved models to predict the progression of severe accidents. The results of this research have been incorporated into various studies (*e.g.*, NUREG–1150 and probabilistic risk assessments performed as part of the Individual Plant Examination (IPE) program) to quantify the risk posed by severe accidents for light water reactors. The result of these studies has been an improved understanding of combustible gas behavior during severe accidents and confirmation that the combustible gas release postulated from a design-basis LOCA was not risk-significant because it would not lead to early containment failure, and that the risk associated with gas combustion was from beyond-design-basis (*e.g.*, severe) accidents.

In making its regulatory decisions, the NRC first considers public safety, then other issues such as public confidence and reducing unnecessary regulatory burden. Based upon the results of significant research into design-basis and beyond design-basis accidents, the NRC has determined that a design-basis combustible gas release is not risk-significant and certain beyond design-basis combustible gas releases are risk-significant. Therefore, the NRC is removing the requirements for combustible gas control systems that mitigate consequences of non-risk-significant design-basis accidents which are also not effective in reducing the risk from combustible gas releases in beyond-design-basis accidents.

The citizen group also contended that because GSI–191, ''Assessment of Debris Accumulation on PWR Sump Pump Performance'', is not resolved, removing the hydrogen recombiner requirements and relaxing the hydrogen and oxygen monitoring requirements are premature and constitute a dangerous trend towards risk ''misinformed'' regulation.

The NRC disagrees with the commenter's contention. The NRC's philosophy on all GSIs is to first determine whether the existing situation provides adequate protection of public health and safety, and if there is sufficient margin to allow continued safe operation of the affected plants while seeking a final resolution of the GSI. For GSI–191, the NRC concluded that even though uncertainties remained regarding the debris accumulation issue, adequate protection of public health and safety was maintained. Accordingly, the fact that GSI–191 has not reached final resolution does not present an impediment to the revision to § 50.44.

An industry group requested that the terms ''safety-significant'' and ''industrial'' instead of high and low safety/risk significance be used in this rule and regulatory guide. The NRC disagrees. The terms ''high and low safety/risk significance'' were not included in the proposed rule and are not in the final rule. The term ''safety-significant'', when used in supporting documentation, is used to identify systems, structures, and components (SSCs) that contribute to safety. The term does not confer the level of significance on the SSC. Additionally, the term ''risk significant'' is used to identify those conditions that contribute to risk. Again, no level of significance is assigned by the use of this term. Additionally, the change in terminology requested by the commenter would be inconsistent with the supporting NRC documents and reports. Changing terminology could cause unnecessary confusion on the part of licensees and the public.

B. General Clarifications

One commenter questioned if the draft regulatory guide would become Regulatory Guide 1.7, Revision 3. When the NRC resolves the comments on DG–1117, the guidance will be published as Regulatory Guide 1.7, Revision 3.

A licensee requested that the first sentence of Item 3 of the fourth paragraph of section B of the draft regulatory guide be revised to read: ''The following requirements apply to all construction permits or operating licenses under 10 CFR Part 50, and to all design approvals, design certifications, or combined licenses under 10 CFR Part 52, any of which are issued after the effective date of the rule.'' The NRC agrees that the commenter's request represents a clearer way of expressing the NRC's intent. In addition, the term ''manufacturing licenses'' has been added to make clear that the revised requirements apply to applicants for manufacturing licensees, which was inadvertently omitted from the proposed rule. These changes have been included in both the regulatory guide and in the final rule.

The licensee also requested that the NRC reword the statement in section 5 of the draft regulatory guide to read: ''For future applicants and licensees as defined in Part 50.44(c), the analysis must address an accident that releases hydrogen generated from 100 percent fuel clad-coolant reaction accompanied by hydrogen burning.'' Another licensee requested that section C.5, ''Containment Integrity'', should state that it does not apply to currently licensed plants. The NRC disagrees with these requests. Section 5 of DG–1117 was intended to apply to current and future plants. However, the wording was not clear and inadvertently caused some confusion on the applicability of the section. To clarify that section 5 applies to current and future plants, its wording has been revised to more closely reflect the rule intent. This revision removes the following

statements from the draft regulatory guide: ''The analysis must address an accident that releases hydrogen generated from 100 percent fuel clad-coolant reaction accompanied by hydrogen burning. Systems necessary to ensure containment integrity must also be demonstrated to perform their function under these conditions.'' The above changes remove the misleading language and clarify the applicability of the section.

C. Monitoring Systems

A private citizen expressed concern about the adequacy and survivability of non safety-related hydrogen and oxygen monitors for assessing hydrogen and oxygen levels after an accident. A reactor licensee stated that the changes to the requirements for hydrogen and oxygen monitoring would actually increase the reliability of hydrogen and oxygen monitoring equipment. A monitor vendor indicated that high-quality commercial grade hydrogen monitors may be susceptible to radiation-induced calibration degradation. The vendor also indicated that these monitors are susceptible to damage from aerosols released during the accident. The vendor believes that commercial grade detectors located inside containment would probably not function in a post-accident environment without verification testing and test-based modifications. The vendor claimed the more severe the accident, the less likely the sensors would properly operate due to increased radiation exposure and increased aerosol loading. In addition, the vendor believes that remote sampling lines for monitors located outside of containment are susceptible to clogging from high-solid aerosols. The vendor suggests it is prudent to retain the safety-related status of hydrogen monitors to ensure comprehensive qualification testing.

The NRC believes that the changes to the requirements for hydrogen and oxygen monitors will continue to ensure acceptable monitor performance. If the changes result in a decrease in monitor reliability, it will not be significant and will not affect public health and safety because the functions served by the monitoring systems are not risk-significant for core melt accident sequences. This conclusion is supported by studies documented in the Feasibility Study (Attachment 2 to SECY–00–0198) which indicate the relatively low risk significance of monitoring systems. Because large, dry and sub-atmospheric containments are robust enough to withstand the effects of hydrogen combustion during full core melt accident sequences, hydrogen monitoring is not risk-significant for these containment designs. For BWR Mark I and Mark II containments, hydrogen monitoring systems are not risk-significant in the early stages of a core melt accident because these containments are inerted. For control of combustible gases generated by radiolysis in the late stage of a core melt accident, oxygen monitors are more important than hydrogen monitors for these designs. For this reason, the design and qualification requirements for oxygen monitors are more stringent than they are for hydrogen monitors. During core melt accidents in BWR Mark III and ice condenser containments, the hydrogen igniter systems are initiated by high containment pressure. Because hydrogen monitors are not needed to initiate or activate any mitigative features during these accidents, they are not risk-significant for reducing the combustible gas threat as long as the hydrogen igniters are operable. If the igniters are not operating (such as during station blackout) hydrogen monitoring does not reduce risk since the containment cannot be purged or vented without electrical power. Nevertheless, the amended rule requires licensees to retain hydrogen monitors (and oxygen monitors in Mark I and Mark II BWRs) for their containments because they are useful in implementing emergency planning and severe accident management mitigative actions for beyond design basis accidents.

As noted in sections III C. and D. of this Supplementary Information, as a consequence of eliminating the design-basis LOCA hydrogen release, the oxygen and hydrogen monitors are no longer required to mitigate potential consequences of combustible gases during design-basis LOCA accidents; thus the monitors are not required to be safety-related and need not meet the procurement, quality assurance, and environmental qualification requirements for safety-related components. Even though amended § 50.44 reclassifies requirements for monitoring systems, the hydrogen and oxygen monitoring systems are still required by the rule to be functional, reliable, and capable of continuously measuring the appropriate parameter in the beyond-design-basis accident environment. Thus, licensees must consider the effects of radiation exposure and high-solid aerosols on monitor performance if they will be present in the post-accident environment for the specific type of facility and monitoring system design. The change made by the amended rule is that licensees are no longer required to use only safety-grade monitoring equipment. For a particular facility and monitoring system design, licensees will, in many cases, be able to select appropriate, high quality, commercial-grade monitors that will meet the performance requirements in the rule. In other cases, if no suitable commercial-grade monitors are available, safety-grade monitors may still be necessary. Also, because there are more types and designs of commercial-grade monitors available than there are safety-grade, the ability to use commercial-grade equipment may make it possible for licensees to select a better-suited monitor for their particular application. For example, it is stated in Attachment 2 to SECY–00–0198 that existing safety-grade hydrogen monitors have a limited hydrogen concentration range and are not the optimum choice. Commercial-grade monitors have the ability to monitor a wider range of hydrogen concentration and could be a better solution.

Because the amended rule implements a performance-based requirement for hydrogen and oxygen monitors to be functional, reliable, and capable of continuously measuring the appropriate parameter in the beyond-design-basis accident environment, licensees will have to ensure that their procurement and quality assurance processes for such equipment address equipment reliability and operability in the beyond design basis accident environmental conditions for the specific facility and monitoring system design. Licensees who do not consider reliability and operability in appropriate environmental conditions when designing and procuring monitoring equipment could be found by NRC inspectors to be in violation of the amended rule.

Another vendor asked if additional requirements beyond commercial grade will be imposed on the monitor's pressure retaining components because the analyzer loop forms part of the containment boundary. The monitor's pressure retaining components must meet current regulations concerning containment penetrations. This vendor also asked if their conclusion that grab samples cannot replace continuous monitoring is correct. The NRC has determined that grab samples cannot replace continuous monitoring. However, grab samples may be taken to verify hydrogen concentrations in the latter stages of the accident response.

A vendor asked if two trains of equipment would be an appropriate solution for ensuring analyzer availability. The NRC cannot respond to

such a question without more information about the reliability of each individual train. Licensees are required to meet the requirements of the rule. Individual licensees may determine how they will meet the functionality, reliability, and capability requirements of the rule, using appropriate guidance such as the regulatory guide, and subject to NRC review and inspection.

A licensee requested that section C.2.2 of the draft regulatory guide indicate that oxygen monitors are only required for plants that inerted containments. The NRC agrees with the commenter that oxygen monitors are only required for inerted containments, but disagrees with the suggested addition. The first sentence of section C.2.2 already states: ''The proposed Section 50.44 would require that equipment be provided for monitoring oxygen in containments that use an inerted atmosphere for combustible gas control.'' The final version of the regulatory guide continues to indicate that oxygen monitoring is only necessary for facilities that have inerted containments. Thus, the NRC believes that the existing guidance is sufficient. This licensee also requested that another statement in section C.2.2 of the draft regulatory guide regarding existing oxygen monitoring commitments be clarified to show that these systems meet the intent of the rule. The NRC agrees with the need for clarification. The statement has been revised to read: ''Existing oxygen monitoring systems approved by the NRC prior to the effective date of the rule are sufficient to meet this criterion.''

D. Purge

A licensee stated that the (model) safety evaluation (SE) should address the acceptability of eliminating containment purge as the design basis method for post-LOCA hydrogen control. The NRC disagrees. The NRC model SE only addresses requirements in the standard technical specifications or licensee technical specifications (TS). In this case, the NRC model SE is for the elimination of the requirements of hydrogen recombiners, and hydrogen and oxygen monitors from the TS. Because containment purging requirements are not in the standard technical specifications or licensees' technical specifications, the NRC model SE does not make conclusions regarding the acceptability of eliminating containment purging as the design basis method for post-LOCA hydrogen control. However, the following statement from the Statements of Considerations was added to the model SE to address the comment: ''. . . the NRC eliminated the hydrogen release associated with a design-basis LOCA from § 50.44 and the associated requirements that necessitated the need for the hydrogen recombiners and the backup hydrogen vent and purge systems.''

E. Station Blackout/Generic Safety Issue 189

The citizens group stated that the proposed § 50.44 should require the deliberate ignition systems in Mark III and ice condenser containments to be available during station blackout. This comment pertains to resolution of GSI–189. The NRC disagrees with the commenter. The evaluation and resolution of GSI–189 is ongoing and proceeding independently of the rule as noted in Section II of this Supplementary Information.

F. Containment Structural Uncertainties

The citizens group argues that the NRC does not have an adequate non-destructive tool to eliminate concerns that containments were built with voids in their walls, that all steel reinforcement bar was improperly installed during construction to ensure uniform structural integrity of containment walls, and that the concrete used in containment walls is of sufficient quality that leaching of containment walls has not weakened the structure. The commenter states that without such non-destructive tools, it is unreasonable to reduce the defense-in-depth strategy with the proposed rule. The commenter provided no technical basis or information to support the assertion that containments were inadequately constructed. The commenter also asserts that the proposed rule creates an undue risk to the public health and safety to solely accommodate the financial interest of the regulated industry. Again, no technical basis was provided to support the assertion of increased risk.

The NRC disagrees with the commenter. The NRC relies on several layers of protection to prevent, detect, and repair defects discovered during construction of concrete containments, including voids, improperly installed reinforcement bar, and low quality concrete. These layers of protection include:

(1) The implementation by the licensee of their NRC-approved 10 CFR Part 50, Appendix B, Quality Assurance (QA) program and the licensee's Quality Control (QC) program;

(2) The requirements of 10 CFR 50.55(e) that holders of Construction Permits identify, evaluate, and report defects and failures to comply with NRC requirements associated with substantial safety hazards to the NRC in a timely manner, generally within 60 days; and

(3) The verification by NRC inspectors as defined by the NRC's construction inspection program contained in NRC Inspection Manual Chapter 2512 that the construction is in accordance with approved design documents, that the licensee is properly and effectively implementing their QA/QC program, that construction defects are reported to NRC as required by 10 CFR 50.55(e), and that appropriate corrective actions are taken by the licensee.

Whenever there is a doubt about the proper locations of reinforcing bars, or voids in a concrete containment structure, appropriate non destructive examination methods and conservative analysis are used by the licensees to demonstrate that the containment and its vital components are able to perform their intended functions.

In addition, the pre-operational performance of the Structural Integrity Test (SIT) provides an added assurance by physically demonstrating the overall structural capability of a concrete containment. Also, 10 CFR 50.65, the maintenance rule, requires licensees to monitor the performance or condition of certain structures to provide reasonable assurance that the structures are capable of fulfilling their intended function throughout the life of the plant. Licensees must also periodically inspect and test their containments in accordance with the ASME Boiler and Pressure Vessel Code, Section XI, Subsection IWL, and Appendix J to 10 CFR Part 50. Finally, at plants that have renewed their licenses, aging management programs are in effect to monitor containment structures to ensure that aging does not significantly degrade their functional capability.

G. PRA/Accident Analysis

An individual submitted questions in three areas. First, the commenter asked why the 30-minute initiation time for initiating hydrogen monitoring was overly burdensome and suggested that the proposed 90-minute initiation time was arbitrary. The NRC disagrees with the commenter. The 30-minute initiation time was developed following the TMI–2 accident based on engineering judgement on the time within which the hydrogen monitors needed to be made functional. Putting this equipment into service within 30 minutes, as directed in NUREG–0737, was found by some utilities during severe accident training (*e.g.*, on nuclear power plant simulators) to be unnecessarily distracting to operators,

because it took them away from more important tasks that needed to be implemented in the near term while the monitoring did not need to be initiated for a longer period. The NRC has determined that performance-based functional requirements rather than prescriptive requirements achieve the desired goal of hydrogen monitor functionality while giving licensees an opportunity to better use operators' time during an accident. The noted 90 minutes come from the time licensees found was needed to get the monitors running in a manner that still met the goal of monitoring hydrogen levels and allowed sufficient time for other operator actions based on severe accident emergency operating procedures. Thus, the 90 minute time period was a result of changing to a performance-based approach and was not arbitrarily specified as the time within which the operators had to act.

The individual also stated that the proposed rule was reducing ''defense in depth'' and that if a utility cannot afford to operate and maintain its nuclear power reactors with the requisite caution and oversight, then the utility should not operate them at all. The NRC disagrees with the commenter's assertion that the amended regulations do not provide adequate defense-in-depth. Defense-in-depth continues to be a prime consideration in NRC decision making. The NRC makes its decisions considering public safety first. Only after public safety is ensured are other issues such as public confidence and reduction of unnecessary burden considered. Defense-in-depth is an element of the NRC's safety philosophy that employs successive measures to prevent accidents or mitigate damage if a malfunction, accident, or naturally caused event occurs at a nuclear facility. It provides redundancy as well as the philosophy of a multiple-barrier approach against fission product releases. Defense-in-depth does not mean that equipment installed in a nuclear power plant never should be removed. Adequate defense-in-depth may be achieved through multiple means or paths.

The commenter also questioned whether the NRC staff has adequate data to demonstrate that the amount of residual and radiolytically-generated combustible gases generated during a design-basis LOCA would not be risk-significant—especially if the LOCA occurred in a plant with older fuel and SSCs than were present during the accident at Three Mile Island, Unit 2. The NRC disagrees with the commenter's assertion that insufficient information is known about hydrogen generation to support amending the current regulations. The amount of hydrogen generated during a design-basis LOCA is not affected by the relative age or vintage of reactor fuel or SSCs. The NRC has developed significant data and insights on the behavior of design-basis and severe accidents after the TMI–2 accident. In amending § 50.44 in 1985, the NRC recognized that an improved understanding of the behavior of accidents involving severe core damage was needed. During the 1980s and 1990s, the NRC devoted significant resources and sponsored a severe accident research program to improve the understanding of core melt phenomena; combustible gas generation, transport, and combustion; and to develop improved models to predict the progression of severe accidents. The results of this research have been incorporated into various studies (*e.g.*, NUREG–1150 and probabilistic risk assessments performed as part of the Individual Plant Examination (IPE) program) to quantify the risk posed by severe accidents for light water reactors. The result of these studies has been an improved understanding of combustible gas behavior during severe accidents. One of the insights from these studies is confirmation that the hydrogen release postulated from a design-basis LOCA was not risk-significant because it would not lead to early containment failure. In addition, it was found that the vast majority of the risk associated with hydrogen combustion was from beyond design-basis (*e.g.*, severe) accidents. The amended requirements are based on the NRC's careful consideration of the post-Three Mile Island information.

H. Passive Autocatalytic Recombiners

An individual questioned why the United States was allowing the removal of recombiners while the French are requiring the installation of passive autocatalytic recombiners in their reactors. The NRC has determined that passive autocatalytic recombiners (PARs) do not need to be considered for U.S. PWRs with large-dry containments or sub-atmospheric containments. This conclusion was drawn after applying the quantitative and qualitative criteria in the form of a framework for risk-informed changes to technical requirements of 10 CFR Part 50 (*See* attachment 1, SECY–00–0198). The NRC found that hydrogen combustion is not a significant threat to the integrity of large, dry containments or sub-atmospheric containments when compared to the 0.1 conditional large release probability of the framework document. In SECY–00–0198, the NRC also concluded that additional combustible gas control requirements for currently licensed large-dry and sub-atmospheric containments were unwarranted.

I. Reactor Venting

An individual expressed concern for the elimination of the requirement prohibiting venting the reactor coolant system if it would aggravate the challenge to containment. According to the comment, the venting could cause an increase in the radiological effluents released off site and an increase in public exposure. The NRC disagrees with the individual's conclusion. As noted in section III.F of this **SUPPLEMENTARY INFORMATION,** the requirement to install high point vents was imposed by the 1981 amendment to § 50.44. This requirement permitted venting of noncondensible gases that may interfere with the natural circulation pattern in the reactor coolant system. This process is regarded as an important safety feature in accident sequences that credit natural circulation of the reactor coolant system. In other sequences, the pockets of noncondensible gases may interfere with pump operation. The high point vents could be instrumental for terminating a core damage accident if ECCS operation is restored. Under these circumstances, venting noncondensible gases from the vessel allows emergency core cooling flow to reach the damaged reactor core and thus, prevents further accident progression.

For certain severe accident sequences, the use of reactor coolant system high point vents is intended to reduce the amount of core damage by providing an opportunity to restore reactor core cooling. Although the release of noncondensible and combustible gases from the reactor coolant system could, in the short term, ''aggravate'' the challenge to containment, the use of these vents will positively affect the overall course of the accident. The release of combustible gases from the reactor coolant system has been considered in the containment design and mitigative features that are required for combustible gas control. Any venting is highly unlikely to affect containment integrity or cause an increase in the radiological effluents released off site that could potentially increase public radiation exposure. However, such venting may reduce the likelihood of further core damage. The reduction in core damage would reduce both the generation of combustible gases and the magnitude of the radiological source term that could be released, thus

reducing the potential for public exposure.

An industry organization requested a revision in a statement in section III.F in the statement of considerations (SOC) concerning the purposes of the high point vents from: ''* * * venting noncondensible gases from the vessel allows emergency core cooling flow to reach the damaged core and thus prevents further accident progression'' to '' * * * the purpose of the high point venting is to ensure that natural circulation cooling is an option for maintaining a long term safe stable state following a core damage accident in which significant amounts of noncondensible gases, such as hydrogen might be generated and retained in the reactor coolant system.'' The NRC disagrees with the comment and believes the current wording is adequate. Other information in section III.F adequately defines the purpose of high point vents by acknowledging their usefulness both for forced circulation scenarios and in the natural circulation mode.

J. Design Basis Accident Hydrogen Source Term

A private citizen questioned that because an unexpected hydrogen bubble and an unexpected hydrogen burn occurred during the accident at Three Mile Island, should hydrogen buildup be considered a known risk for which licensees should try to monitor and control as thoroughly as possible? The NRC agrees with the commenter that hydrogen generation during severe accidents is an expected phenomenon. After the TMI accident, the NRC has sponsored an extensive research program on the behavior of severe accidents. This program was designed improve the understanding of core melt phenomena; combustible gas generation, transport, and combustion; and to develop improved models to predict the progression of severe accidents. The results of this research have been incorporated into various studies (*e.g.*, NUREG–1150 and probabilistic risk assessments performed as part of the Individual Plant Examination (IPE) program) to quantify the risk posed by severe accidents for water-cooled reactors.

The result of these studies has been an improved understanding of combustible gas behavior during severe accidents and confirmation that the combustible gas release postulated from a design-basis LOCA was not risk-significant because it would not lead to early containment failure, and that the risk associated with gas combustion was from beyond-design-basis (*e.g.*, severe) accidents. Thus, the requirements for control and monitoring of combustible gases are being reduced for the non-risk-significant design-basis accident scenarios. The amended regulations are entirely consistent with and justified by the findings of the post-TMI studies.

K. Requested Minor Modifications

An industry group requested that the last paragraph of Section B of the draft regulatory guide be changed to read: ''The treatment requirements for the safety-significant components in the combustible gas control systems, the atmospheric mixing systems and the provisions for measuring and sampling are delineated in Section C, Regulatory Position.'' The NRC disagrees with the requested change. Section 50.44 is being revised to eliminate unnecessary requirements relating to combustible gas control in containment. The remaining requirements have been determined by the NRC to be necessary to mitigate the risk associated with combustible gas generation. The regulatory guide provides recommended treatments for all structures, systems, and components credited for meeting those requirements. Because the regulatory guide is only guidance, licensees are free to devise their own treatments for these structures, systems, and components, subject to NRC review and inspection.

L. Atmosphere Mixing

A private citizen suggested adding criteria to the regulatory guide to assess the adequacy of the performance of atmosphere mixing systems. The NRC disagrees with the commenter that these criteria are needed. The NRC has already evaluated the adequacy of atmosphere mixing at currently operating pressurized and boiling water reactors. However, for future water-cooled reactor designs, the NRC has decided to specify that containments must have the capability for ensuring a mixed atmosphere during ''design-basis and significant beyond design-basis accidents''. Other guidance on determining the adequacy of atmosphere mixing systems is also provided in the rule and the regulatory guide.

An industry group requested that the SOC and regulatory guide be revised to only impose requirements on safety-significant hydrogen (atmospheric) mixing systems. They contend that some large dry containments have hydrogen mixing systems in addition to containment fan cooler units. The fan cooler units are supposedly the prime mode of ensuring a mixed atmosphere; therefore, the hydrogen mixing systems are classified as low safety-significance. The industry group believes that regulatory requirements should not be imposed on low safety-significant equipment. The NRC disagrees with the requested change. Section 50.44 is being revised to eliminate unnecessary requirements relating to combustible gas control in containment. The remaining requirements have been determined by the NRC to be necessary to mitigate the risk associated with combustible gas generation. The regulatory guide provides recommended treatments for all structures, systems, and components credited for meeting those requirements. Because the regulatory guide only provides guidance, licensees are free to devise their own treatments for these structures, systems, and components, subject to NRC review and inspection.

M. Current Versus Future Reactor Facilities

An industry group requested that § 50.44(c) be amended to clarify that its requirements relate only to light-water reactors. The NRC acknowledges that the proposed requirements in § 50.44(c) were largely patterned after light-water reactor requirements and might not be specifically applicable to all types of future light-water and non light-water reactor designs. Therefore, the NRC has modified § 50.44(c) to apply only to future water-cooled reactors with characteristics such that the potential for production of combustible gases during design-basis and significant beyond design-basis accidents is comparable to current light-water reactor designs. In addition, the NRC has added a new paragraph (d) that specifies combustible gas control information to be provided by applicants for future reactor designs when the potential for the production of combustible gases is not comparable to current light-water reactor designs. The purpose of this information is to determine if combustible gas generation is technically relevant to the proposed design; and, if so, to demonstrate that safety impacts of combustible gases generated during design-basis and significant beyond design-basis accidents have been addressed in the design of the facility to ensure adequate protection of public health and safety and common defense and security.

The industry group also commented that the regulatory guide is unclear on what parts are applicable to existing reactors and what parts are applicable to future reactors. The Introduction and section B do not agree. The NRC agrees. The regulatory guide has been modified to clarify the applicability of the revised § 50.44 to present and future water-

cooled and non water-cooled reactors. The industry group also noted that the proposed language, the draft regulatory guide, and the proposed change to the Standard Review Plan incorrectly assume that all new reactor designs will be light-water reactors and will present the same combustible gas hazard. Future reactors, whether light-water or non-light-water may use different materials, cooling, or moderating mediums that may not result in the production of the same combustible gases, or quantities of combustible gas as the current light-water reactor designs. The NRC agrees. For the reasons given above, the final rule, the regulatory guide, and the standard review plan have all been modified to clarify their applicability to future reactor designs.

N. Equipment Qualification/ Survivability

A licensee suggested adding a clarifying statement to the SOC concerning equipment survivability for Mark III and ice condenser plants. The commenter requested a statement clearly stating that no new equipment survivability requirements are being imposed and that existing equipment survivability and environmental analyses remain valid for compliance with the revised rule. The NRC agrees with commenter that the rule does not impose any additional equipment survivability requirements on licensees; existing equipment survivability and environmental analyses remain valid. The hydrogen and oxygen monitoring systems are required by the rule to be functional, reliable, and capable of continuously measuring the appropriate parameter in the beyond design-basis accident environment.

This licensee also noted that, due to the reclassification of the hydrogen and oxygen monitors from RG 1.97 Category I to lower categories, these monitors no longer have to be qualified in accordance with 10 CFR 50.49. The NRC agrees that the monitoring equipment need not be qualified in accordance with § 50.49. The hydrogen and oxygen monitoring systems are still required by the rule to be functional, reliable, and capable of continuously measuring the appropriate parameter in the beyond design-basis accident environment.

The licensee suggested that the NRC clarify that the revised rule will not affect the requirements or environmental conditions used by licensees to demonstrate compliance with § 50.49. The NRC agrees with the commenter that existing licensee analyses and environmental conditions used to establish compliance with 10 CFR 50.49 will not be affected by the amended rule and that no new analyses or environmental conditions are imposed by these amendments to § 50.44.

V. Petitions for Rulemaking—PRM–50–68

The NRC received a petition for rulemaking submitted by Bob Christie of Performance Technology, Knoxville, Tennessee, in the form of two letters dated October 7, 1999, and November 9, 1999. The petition requested that the NRC amend its regulations concerning hydrogen control systems at nuclear power plants. The petitioner believes that the current regulations on hydrogen control systems at some nuclear power plants are detrimental and present a health risk to the public. The petitioner believes that similar detrimental situations may apply to other systems as well (such as the requirement for a 10-second diesel start time). The petitioner believes his proposed amendments would eliminate those situations associated with hydrogen control systems that present adverse conditions at nuclear power plants. The petition was docketed as PRM–50–68 on November 15, 1999. On January 12, 2000 (65 FR 1829), the NRC published a notice of receipt of this petition in the **Federal Register** that summarized the issues it contains.

Specifically, the petitioner performed a detailed review of the San Onofre Task Zero Safety Evaluation Report (Pilot Program for Risk-Informed Performance-Based Regulation) conducted by the NRC staff and dated September 3, 1998, concerning that plant's hydrogen control system. The petitioner requested that the NRC:

1. Retain the existing requirement in § 50.44(b)(2)(i) for inerting the atmosphere of existing Mark I and Mark II containments.
2. Retain the existing requirement in § 50.44(b)(2)(ii) for hydrogen control systems in existing Mark III and PWR ice condenser containments to be capable of handling hydrogen generated by a metal/water reaction involving 75 percent of the fuel cladding.
3. Require all future light water reactors to postulate a 75 percent metal/water reaction (instead of the 100 percent required by the current rule) for analyses undertaken pursuant to § 50.44(c).
4. Retain the existing requirements in § 50.44 for high point vents.
5. Eliminate the existing requirement in § 50.44(b)(2) for a mixed atmosphere in containment.
6. Eliminate the existing requirement for hydrogen releases during design basis accidents of an amount equal to that produced by a metal/water reaction of 5 percent of the cladding.
7. Eliminate the requirement for hydrogen recombiners or purge in LWR containments.
8. Eliminate the existing requirements for hydrogen and oxygen monitoring in LWR containments.
9. Revise GDC 41—Containment Atmosphere Cleanup—to require systems to control fission products and other substances that may be released into the reactor containment for accidents only where there is a high probability that fission products will be released to the reactor containment.
10. Issue an interim policy statement applicable to all NRC staff to ensure that the NRC Executive Director for Operations was promptly notified whenever staff discovered cases where compliance with design-basis accident requirements was detrimental to public health.

The NRC received five comment letters on PRM–50–68. The commenters included two nuclear power plant licensees, a nuclear reactor vendor, a nuclear power plant owners group, and the Nuclear Energy Institute (NEI). Copies of the public comments on PRM–50–68 are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. All commenters were supportive of some of the issues raised by the petition. One of the reactor licensees commented that analytical and risk bases exist to support the proposed changes for Mark I Boiling Water Reactor containments. The other licensee endorsed the comments submitted by NEI. The reactor vendor commented that the petitioner's proposal simplifies the language and requirements of the regulation while retaining an equivalent level of safety. However, the vendor also noted that the proposal does not appear to address the structural integrity of the containment as in the existing language at § 50.44(c)(3)(iv). The owner's group commented that the changes requested by the petitioner for large, dry containments were also applicable to ice condenser containments and suggested that the requirement for all hydrogen control measures in § 50.44 be reexamined and made ''consistent with many other portions of plant operation and maintenance.'' The NEI agreed with the petitioner that the San Onofre hydrogen control licensing actions could be applied generically for pressurized water reactors with large, dry (including subatmospheric) containments. One licensee, the reactor vendor and the NEI disagreed with the petitioner's position that an interim policy statement is necessary to instruct

the NRC staff how to proceed in instances when ''adherence to design basis requirements would be detrimental to public health.'' The other commenters were silent regarding the request for an interim policy statement.

The NRC has evaluated the technical issues and the associated public comments and has determined that the specific issues contained in PRM–50–68 should be granted in part and denied in part as discussed in the following paragraphs.

Issue 1: Retain the existing requirement for inerting the atmosphere of existing Mark I and Mark II containments.

Resolution of Issue 1: Consistent with the petitioner's request, § 50.44(b)(2)(i) of the final rule retains the current requirement for inerting of existing Mark I and Mark II containments. The NRC's basis for this decision is provided in section III A. of this document.

Issue 2: Retain the existing requirement for hydrogen control systems in existing Mark III and PWR ice condenser containments to be capable of handling hydrogen generated by a metal/water reaction involving 75 percent of the fuel cladding.

Resolution of Issue 2: Consistent with the petitioner's request, § 50.44(b)(2)(ii) of the final rule retains the above requirement for hydrogen control systems in existing Mark III and PWR ice condenser containments to be capable of handling hydrogen generated by a metal/water reaction involving 75 percent of the fuel cladding. The NRC's basis for this decision is provided in section III A. of this document.

Issue 3: Require all future light water reactors to postulate a 75 percent metal/water reaction (instead of the 100 percent required by the current rule) for analyses under § 50.44(c).

Resolution of Issue 3: The NRC declines to adopt this request. For future water-cooled reactors, the final rule retains the previous requirement to postulate hydrogen generation by a 100 percent metal/water reaction when performing structural analyses of reactor containments under accident conditions. Future containments that cannot structurally withstand the consequences of this amount of hydrogen must be inerted or must be equipped with equipment to reduce the concentration of hydrogen during and following an accident. The NRC's basis for this decision is provided in section III E. of this document.

Issue 4: Retain the existing requirements for high point vents.

Resolution of Issue 4: Consistent with the petitioner's request, the requirements for high point vents in former 10 CFR 50.44(c)(3)(iii) have been retained in the final rule, but have been modified slightly to clarify the acceptable use of these vents during and following an accident. Because the need for high point vents is relevant to ECCS performance during severe accidents and is not pertinent to combustible gas control, these high point venting requirements have been removed from 10 CFR 50.44 and relocated to 10 CFR 50.46a where the remaining requirements for ECCS are located. The basis for this decision is provided in section III F. of this document.

Issue 5 Eliminate the existing requirement in § 50.44(b)(2) to ensure a mixed atmosphere in containment.

Resolution of Issue 5: The NRC declines to adopt this request. The final rule retains the requirement for all containments to ensure a mixed atmosphere to prevent local accumulation of combustible or detonable gasses that could threaten containment integrity or equipment operating in a local compartment. The NRC's basis for retaining this requirement is provided in section III A. of this document.

Issue 6: Eliminate the existing requirement for postulating design basis accident hydrogen releases of an amount equal to that produced by a metal/water reaction of 5 percent of the cladding.

Resolution of Issue 6: The NRC grants this request. The NRC has determined that hydrogen release during design basis accidents is not risk-significant because it does not contribute to the conditional probability of a large release of radionuclides up to approximately 24 hours after the onset of core damage. The NRC believes that accumulation of combustible gases beyond 24 hours can be managed by implementation of severe accident management guidelines. The NRC's technical basis for eliminating this requirement is discussed in greater detail in section III B. of this document.

Issue 7: Eliminate the requirement for hydrogen recombiners or purge in light-water reactor containments.

Resolution of Issue 7: The NRC grants this request. As noted in Issue 6 above, the NRC has determined that hydrogen release during design basis accidents is not risk-significant because it does not contribute to the conditional probability of a large release of radionuclides up to approximately 24 hours after the onset of core damage. The NRC believes that accumulation of combustible gases beyond 24 hours can be managed by implementation of severe accident management guidelines. Thus, hydrogen recombiners and hydrogen vent and purge systems are not required. The NRC's basis for eliminating these requirements is discussed in greater detail in section III B. of this document.

Issue 8: Eliminate the existing requirements for hydrogen and oxygen monitoring in light-water reactor containments.

Resolution of Issue 8: The NRC declines to adopt this request. The final rule retains the existing requirement for monitoring hydrogen in the containment atmosphere for all plant designs. Hydrogen monitors are required to assess the degree of core damage during beyond design-basis accidents. Hydrogen monitors are also used in conjunction with oxygen monitors to guide licensees in implementation of severe accident management strategies. Also, the NRC has decided to codify the existing regulatory practice of monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. If an inerted containment became de-inerted during a beyond design-basis accident, other severe accident management strategies, such as purging and venting, would need to be considered. Monitoring of both hydrogen and oxygen is necessary to implement these strategies. The NRC's bases for these requirements are discussed in greater detail in sections III C. and III D. of this document.

Issue 9: Revise GDC 41—Containment Atmosphere Cleanup—to require systems to control fission products and other substances that may be released into the reactor containment for accidents only when there is a high probability that fission products will be released to the reactor containment.

Resolution of Issue 9: The NRC declines to adopt the petitioner's request on this issue. The NRC believes that the amended rule alleviates the need to revise Criterion 41. In a December 4, 2001, letter from the petitioner to the NRC, the petitioner inferred that the intent of the proposed change was to focus Criterion 41 on the containment capability when a severe accident occurs. This concern is addressed in the final § 50.44 that establishes the design criteria for reactor containment and associated equipment for controlling combustible gas released during a postulated severe accident. The General Design Criteria in Appendix A of 10 CFR Part 50 were established to set the minimum requirements for the principal design criteria for water-cooled nuclear power plants. The postulated accidents used in the development of these minimum design criteria are normally design-basis accidents. The NRC believes it is not

appropriate to address severe accident design requirements in the General Design Criteria.

Issue 10: The petitioner requested the NRC to issue an interim policy statement applicable to the NRC staff to ensure that the NRC Executive Director for Operations was promptly notified whenever the staff discovered cases where compliance with design-basis accident requirements was detrimental to public health.

Resolution of Issue 10: The petitioner's additional request for an interim policy statement is not part of the petition for rulemaking. Nevertheless, the NRC has evaluated the request and associated public comments and has concluded that hydrogen control requirements referenced by the petitioner have been modified in the final rule so that design basis requirements ensure adequate protection of public health and safety. The NRC also believes that if NRC staff members discover future situations when design basis requirements detract from safety, the staff will elevate these issues for management review; thus, no NRC staff guidance in this area is necessary.

Petition for Rulemaking—PRM–50–71

The NRC also received a petition for rulemaking submitted by NEI. The petition, dated April 12, 2000, was published in the **Federal Register** for public comment on May 31, 2000 (65 FR 34599). The petitioner requested that the NRC amend its regulations to allow nuclear power plant licensees to use zirconium-based cladding materials other than Zircaloy or ZIRLO, provided the cladding materials meet the requirements for fuel cladding performance and have been approved by the NRC staff. The petitioner believes the proposed amendment would improve the efficiency of the regulatory process by eliminating the need for individual licensees to obtain exemptions to use advanced cladding materials that have already been approved by the NRC.

Specifically, the petitioner states that the NRC's current regulations require uranium oxide fuel pellets, used in commercial reactor fuel, to be contained in cladding material made of Zircaloy or ZIRLO. The petitioner indicates that the requirement to use either of these materials is stated in § 50.44 and § 50.46. The petitioner notes that subsequent to promulgation of these regulations, commercial nuclear fuel vendors have developed and continue to develop materials other than Zircaloy or ZIRLO that the NRC reviews and approves for use in commercial power reactor fuel. Each of these approvals requires the NRC to grant an exemption to the licensee that requests to use fuel with these cladding materials. The petitioner requests that the NRC amend its regulations to allow licensees discretion to use zirconium-based cladding materials other than Zircaloy or ZIRLO, provided that the cladding materials meet the fuel cladding performance requirements and have been reviewed and approved by the NRC staff. The petitioner notes that during the past nine years there have been at least eight requests for exemptions and that each exemption has cost more than $50,000. The petitioner states that the requests for exemptions have become increasingly more frequent, causing significant administrative confusion and having a potentially adverse effect on efficient and effective use of NRC, licensee, and vendor resources.

The petitioner believes the NRC should amend § 50.44 and § 50.46 to allow the use of other zirconium-based alloys in addition to those specified in the current regulations. The petitioner states that the stated goal of the existing regulations is to ensure adequate cooling for reactor fuel in case of a design-basis accident. However, the petitioner asserts that the proposed amendment does not degrade the ability to meet that goal. The petitioner believes it removes an unwarranted licensing burden without increasing risk to public health and safety.

The NRC received 11 comment letters on PRM 50–71. Seven comments were from nuclear reactor licensees, two from individual members of the public, one from a nuclear reactor vendor and one from a nuclear industry trade association (NEI). Five of the nuclear reactor licensees were supportive of the petition and endorsed the comments and positions provided by NEI in their comments on the petition. One licensee stated that the proposed rule should note that if a fuel vendor's cladding has met the requirements for use on a generic basis, a process for the implementing utility to use that fuel under their existing license already exists. Another licensee agreed that industry needs relief on use of zirconium-based cladding, but because cladding is a critical safety barrier, the basis for relief should come from proven, in-reactor performance. A better approach would be to update the approved list of allowed fuel rod cladding materials as more products demonstrate reliable, in-reactor performance.

Two comments were received from individuals. One individual opposed the petition because it did not contain the specific review and acceptance criteria that NRC would utilize when reviewing and approving future cladding materials under the proposed rule. The commenter also opposed the practice of allowing lead fuel assembly tests to demonstrate performance of new materials in commercial reactors before NRC approval, but also stated that long term performance testing of materials was necessary, must take into account any differences at individual utilities, and must consider future performance in dry cask storage systems. Another individual commented that the petition should be denied because the evaluations of cladding materials do not account for the realities of plant operation under normal conditions and the loss of coolant accident environment. This commenter stated that NRC approval of materials whose properties fell ''within'' acceptance criteria was unacceptable because an approval might be issued for a material whose properties were ''right to the limit'' without an adequate margin of safety. With respect to hydrogen generation, the commenter opposed generic approvals of new materials because site-specific material variations might yield unexpected results.

The nuclear reactor vendor supported adoption of the proposed rule changes published in the **Federal Register** and agreed with the suggested revision of § 50.46(e) proposed by NEI in its comments on the document. The vendor also recommended consideration of a direct final rule process to implement the petition. The NEI provided revised wording for proposed language in § 50.46(e) and urged the NRC to promulgate the revision as a direct final rule.

After evaluating the petition and public comments, the NRC has determined that the petition should be denied in part. The final § 50.44 rule has been written so that it does not refer to specific types of zirconium cladding; instead, the rule applies to all boiling and pressurized water reactors. When the NRC approves the use of boiling or pressurized water reactor fuel with other types of cladding, no exemptions from § 50.44 will be needed. Thus, even though the final rule does not contain the language specifically requested to be added by the petitioner, the rule accomplishes the petitioner's intended purpose with respect to § 50.44. Also, the NRC did not utilize the direct final rulemaking process because the other provisions being amended in § 50.44 were too complex to allow the promulgation of a direct final rule. The NRC is making no decision at this time

on the part of the petition regarding the request to amend the regulations in § 50.44 to allow the use of other zirconium-based alloys in addition to those specified in the current regulations. The NRC will evaluate that portion of the NEI petition in a separate action.

VII. Section-by-Section Analysis of Substantive Changes

Section 50.34—Contents of Applications; Technical Information

Paragraph (a)(4) on ECCS performance is revised to reference the reactor coolant system high point venting requirements located in § 50.46a. These requirements were relocated to § 50.46a from § 50.44.

Paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added, that requires applications for future reactors to include the analyses and descriptions of the equipment and systems required by § 50.44.

Section 50.44—Combustible Gas Control in Containment

Paragraph (a), *Definitions.* Paragraph (a) adds definitions for two previously undefined terms, ''mixed atmosphere,'' and ''inerted atmosphere.''

Paragraph (b), *Requirements for currently-licensed reactors.* This paragraph sets forth the requirements for control of combustible gas in containment for currently-licensed reactors. All BWRs with Mark I and II type containments are required to have an inerted containment atmosphere, and all BWR Mark III type containments and PWRs with ice condenser type containments are required to include a capability for controlling combustible gas generated from a metal water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume) so that there is no loss of containment integrity. Current requirements in § 50.44(c)(i), (iv), (v), and (vi) are incorporated in to the amended regulation without substantial change. Previously reviewed and installed combustible gas control mitigation features to meet the existing regulations are considered to be sufficient to meet this section. Because these requirements address beyond design-basis combustible gas control, it is acceptable for structures, systems, and components provided to meet these requirements to be non safety-related and may be procured as commercial grade items.

Paragraph (b)(1), *Mixed atmosphere.* The requirement for capability ensuring a mixed atmosphere in all containments is consistent with the current requirement in § 50.44(b)(2) and does not require further analysis or modifications by current licensees. The intent of this requirement is to maintain those plant design features (*e.g.*, availability of active mixing systems or open compartments) that promote atmospheric mixing. The requirement may be met with active or passive systems. Active systems may include a fan, a fan cooler, or containment spray. Passive capability may be demonstrated by evaluating the containment for susceptibility to local hydrogen concentration. These evaluations have been conducted for currently licensed reactors as part of the IPE program.

Paragraph (b)(3) retains the existing requirements for BWR Mark III and PWR ice condenser facilities that do not use inerting to establish and maintain safe shutdown and containment structural integrity to use structures, systems, and components capable of performing their functions during and after exposure to hydrogen combustion.

Paragraph (b)(4)(i) codifies the existing regulatory practice of monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. The rule does not require further analysis or modifications by current licensees but certain design and qualification criteria are relaxed. The rule requires that equipment for monitoring oxygen be functional, reliable and capable of continuously measuring the concentration of oxygen in the containment atmosphere following a beyond design-basis accident. Equipment for monitoring oxygen must perform in the environment anticipated in the severe accident management guidance. The oxygen monitors are expected to be of high-quality and may be procured as commercial grade items. Existing oxygen monitoring commitments for currently licensed plants are sufficient to meet this rule.

Paragraph (b)(4)(ii) retains the requirement in § 50.44(b)(1) for measuring the hydrogen concentration in the containment. The rule does not require further analysis or modifications by current licensees but certain design and qualification criteria are relaxed. The rule requires that equipment for monitoring hydrogen be functional, reliable and capable of continuously measuring the concentration of hydrogen in the containment atmosphere following a significant beyond design-basis accident of comparable severity to the accident at Three Mile Island. Equipment for monitoring hydrogen must perform in the environment anticipated in the severe accident management guidance. The hydrogen monitors may be procured as commercial grade items. Existing hydrogen monitoring commitments for currently licensed plants are sufficient to meet this rule.

Paragraph (b)(5) retains the current analytical requirements in § 50.44(c)(3)(iv) that BWR Mark III and PWR ice condenser containments be provided with a hydrogen control system justified by a suitable program of experiment and analysis that can handle without loss of containment integrity an amount of hydrogen equivalent to that generated by a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel. Existing licensee hydrogen control systems and analyses are expected to be sufficient to demonstrate compliance with this requirement.

Paragraph (c), *Requirements for future water-cooled reactor applicants and licensees.* Paragraph (c) promulgates requirements for combustible gas control in containment for all future water-cooled reactor construction permits or operating licenses under Part 50 and for all water-cooled reactor design approvals, design certifications, combined licenses, or manufacturing licenses under Part 52, whose reactor designs have comparable potential for the production of combustible gases as current light water reactor designs. The current requirements in § 50.34(f)(2)(ix) and (f)(3)(v) are retained without material change, but have been consolidated and reworded to be more concise. Paragraph (c)(1) requires a mixed containment atmosphere during design-basis and significant beyond design-basis accidents. This wording was chosen to specify a mixed atmosphere requirement during important accident scenarios similar to the current requirements for PWR and BWR containments. Paragraph (c)(2) requires all containments to have an inerted atmosphere or limit hydrogen concentrations in containment during and following an accident that releases an equivalent amount of hydrogen as would be generated from a 100 percent fuel-clad coolant reaction, uniformly distributed, to less than 10 percent and maintain containment structural integrity and appropriate accident mitigating features. Structures, systems, and components (SSCs) provided to meet this requirement must be designed to provide reasonable assurance that they will operate in the severe accident environment for which they are intended and over the time span for which they are needed. Equipment survivability expectations under severe accident conditions should consider the

circumstances of applicable initiating events (such as station blackout [1] or earthquakes) and the environment (including pressure, temperature, and radiation) in which the equipment is relied upon to function. The required system performance criteria will be based on the results of design-specific reviews which include probabilistic risk-assessment as required by § 52.47(a)(1)(v). Because these requirements address beyond design-basis combustible gas control, SSCs provided to meet these requirements need not be subject to the environmental qualification requirements of § 50.49; quality assurance requirements of 10 CFR Part 50, Appendix B; and redundancy/diversity requirements of 10 CFR Part 50, Appendix A. Guidance such as that found in Appendices A and B of RG 1.155, ''Station Blackout,'' is appropriate for equipment used to mitigate the consequences of severe accidents. Paragraph (c) also promulgates requirements for ensuring a mixed atmosphere and monitoring oxygen and hydrogen in containment, consistent with the requirements for current plants set forth in paragraphs (b)(1), and (b)(4)(i) and (ii).

Paragraph (d), *Requirements for future non water-cooled reactor applicants and licensees and certain water-cooled reactor applicants and licensees.* A new paragraph (d) is added to specify information that must be submitted by future reactor applicants to determine if combustible gas generation is technically relevant to the proposed design. If combustible gas generation is technically relevant, the applicant must submit additional information to demonstrate that safety impacts of combustible gases generated during design-basis and significant beyond-design-basis accidents have been addressed in the design of the facility to ensure adequate protection of public health and safety and common defense and security. Paragraph (d) is applicable to non water-cooled reactors and water-cooled reactors that have different characteristics regarding the production of combustible gases from current light water reactors. The information must address the potential for producing combustible gases during design basis accidents and significant beyond design-basis accidents comparable to accident scenarios that were evaluated for combustible gas generation at current light water reactors.

Section 50.46a—Acceptance Criteria for Reactor Coolant System Venting Systems

Section 50.46a is a new section that contains the relocated requirements for high point vents currently contained in § 50.44. The amendment includes a change that eliminates a requirement prohibiting venting the reactor coolant system if it could ''aggravate'' the challenge to containment. Any venting is highly unlikely to affect containment integrity; however, such venting will reduce the likelihood of further core damage. The NRC continues to view use of the high point vents as an important strategy that should be considered in a plant's severe accident management guidelines.

Section 52.47—Contents of Applications

Section 52.47 is amended to eliminate the reference to paragraphs within § 50.34(f) for technically relevant requirements for combustible gas control in containment for future design certifications. Under the final rule, the technical requirements for combustible gas control will be set forth in § 50.44, rather than in § 50.34(f).

VIII. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at One White Flint North, Public File Area O 1F21, 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* These documents may be viewed and downloaded electronically via this Web site.

NRC's Electronic Reading Room (ERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/NRC/ADAMS/index.html.* (Provide accession number for each document.)

The NRC staff contact (NRC Staff). Richard Dudley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1116; e-mail *rfd@nrc.gov.*

Document	PDR	Web	ERR	NRC staff
Comments received	X	X	X	.....
Regulatory Analysis	X	X	ML031640482	.....
RG 1.7, Rev. 3	X	X	ML031640498	X
Rev. SRP, Section 6.2.5	X	X	ML031640518	X

A free single copy of Regulatory Guide 1.7 may be obtained by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or E-mail: *DISTRIBUTION@nrc.gov* or Facsimile: (301) 415–2289.

Copies of NUREGS may be purchased from The Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–0001; Internet: bookstore@gpo.gov; (202) 512–1800. Copies are also available from the National Technical Information Service, Springfield, VA 22161–0002; *http://www.ntis.gov;* 1–800–533–6847 or, locally, (703) 605–6000. Some publications in the NUREG series are posted at NRC's technical document Web site *http://www.nrc.gov/NRC/NUREGS/indexnum.html.*

IX. Voluntary Consensus Standards

The National Technology Transfer and Advancement 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 using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is using the following Government-unique standard: 10 CFR 50.44, U.S.

[1] Section 50.44 does not require the deliberate ignition systems used by BWRs with Mark III type containments and PWRs with ice condenser type containments to be available during station blackout events. The deliberate ignition systems should be available upon the restoration of power. Additional guidance concerning the availability of deliberate ignition systems during station blackout sequences is being developed as part of the NRC review of Generic Safety Issue 189: ''Susceptibility of Ice Condenser and Mark III Containments to Early Failure from Hydrogen Combustion During a Severe Accident.''

Nuclear Regulatory Commission, October 27, 1978 (43 FR 50163), as amended. No voluntary consensus standard has been identified that could be used instead of the Government-unique standard.

X. Finding of No Significant Environmental Impact: Environmental Assessment

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, 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. The basis for this determination reads as follows:

This action endorses existing requirements and establishes regulations that reduce regulatory burdens for current and future licensees and consolidates combustible gas control regulations for future reactor applicants and licensees. This action stems from the NRC's ongoing effort to risk-inform its regulations. The final rule reduces the regulatory burdens on present and future power reactor licensees by eliminating the LOCA design-basis accident as a combustible gas control concern. This change eliminates the requirements for hydrogen recombiners and hydrogen purge systems and relaxes the requirements for hydrogen and oxygen monitoring equipment to make them commensurate with their safety and risk significance.

This action does not significantly increase the probability or consequences of an accident. No changes are being made in the types or quantities of radiological effluents that may be released off site, and there is no significant increase in public radiation exposure because there is no change to facility operations that could create a new or affect a previously analyzed accident or release path. There may be a reduction of occupational radiation exposure since personnel will no longer be required to maintain or operate, if necessary, the hydrogen recombiner systems which are located in or near radiologically controlled areas.

With regard to non-radiological impacts, no changes are being made to non-radiological plant effluents and there are no changes in activities that would adversely affect the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

The primary alternative to this action would be the no action alternative. The no action alternative would continue to impose unwarranted regulatory burdens for which there would be little or no safety, risk, or environmental benefit.

The determination of this environmental assessment is that there is no significant offsite impact to the public from this action.

The NRC requested the views of the States on the environmental assessment for this rule. No comments were received.

XI. Paperwork Reduction Act Statement

This final rule decreases the burden on new applicants to complete the hydrogen control analysis required to be submitted in a license application, as required by sections 50.34 or 52.47. The public burden reduction for this information collection is estimated to average 720 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0011 and 3150–0151.

XII. 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.

XIII. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available as indicated under the Availability of Documents heading of the Supplementary Information section.

XIV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. 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 size standards established by the NRC (10 CFR 2.810).

XV. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not impose more stringent safety requirements on 10 CFR Part 50 licensees. For current licensees, the amendments either maintain without substantive change existing requirements or provide voluntary relaxations to current regulatory requirements. Voluntary relaxations (*i.e.*, relaxations that are not mandatory) are not considered backfitting as defined in 10 CFR 50.109(a)(1). For future applicants and future licensees, the amendments also do not involve backfitting as defined in 10 CFR 50.109(a)(1) because the changes have only a prospective effect on future design approval and design certification applicants and future applicants for licensees under 10 CFR Part 50 and 52. As the Commission has indicated in other rulemakings, sec., *e.g.*, 54 FR 15372, April 18, 1989 (Final Part 52 Rule), the expectations of future applicants are not protected by the Backfit Rule. Therefore, the NRC has not prepared a backfit analysis for this final rule.

XVI. 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 of OMB.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and record keeping requirements, Standard design, Standard design certification.

■ 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 Parts 50 and 52.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.34, paragraph (a)(4) is revised, paragraph (g) is redesignated as paragraph (h), and a new paragraph (g) is added to read as follows:

§ 50.34 Contents of applications; technical information.

(a) * * *

(4) A preliminary analysis and evaluation of the design and performance of structures, systems, and components of the facility with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high point vents following postulated loss-of-coolant accidents must be performed in accordance with the requirements of § 50.46 and § 50.46a of this part for facilities for which construction permits may be issued after December 28, 1974.

* * * * *

(g) *Combustible gas control.* All applicants for a reactor construction permit or operating license under this part, and all applicants for a reactor design approval, design certification, or license under part 52 of this chapter, whose application was submitted after October 16, 2003, shall include the analyses, and the descriptions of the equipment and systems required by § 50.44 as a part of their application.

* * * * *

■ 3. Section 50.44 is revised to read as follows:

§ 50.44 Combustible gas control for nuclear power reactors.

(a) *Definitions.*

(1) *Inerted atmosphere* means a containment atmosphere with less than 4 percent oxygen by volume.

(2) *Mixed atmosphere* means that the concentration of combustible gases in any part of the containment is below a level that supports combustion or detonation that could cause loss of containment integrity.

(b) *Requirements for currently-licensed reactors.* Each boiling or pressurized water nuclear power reactor with an operating license on October 16, 2003, except for those facilities for which the certifications required under § 50.82(a)(1) have been submitted, must comply with the following requirements, as applicable:

(1) *Mixed atmosphere.* All containments must have a capability for ensuring a mixed atmosphere.

(2) *Combustible gas control.* (i) All boiling water reactors with Mark I or Mark II type containments must have an inerted atmosphere.

(ii) All boiling water reactors with Mark III type containments and all pressurized water reactors with ice condenser containments must have the capability for controlling combustible gas generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume) so that there is no loss of containment structural integrity.

(3) *Equipment Survivability.* All boiling water reactors with Mark III containments and all pressurized water reactors with ice condenser containments that do not rely upon an inerted atmosphere inside containment to control combustible gases must be able to establish and maintain safe shutdown and containment structural integrity with systems and components capable of performing their functions during and after exposure to the environmental conditions created by the burning of hydrogen. Environmental conditions caused by local detonations of hydrogen must also be included, unless such detonations can be shown unlikely to occur. The amount of hydrogen to be considered must be equivalent to that generated from a metal-water reaction involving 75 percent of the fuel cladding surrounding the active fuel region (excluding the cladding surrounding the plenum volume).

(4) *Monitoring.* (i) Equipment must be provided for monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. Equipment for monitoring oxygen must be functional, reliable, and capable of continuously measuring the concentration of oxygen in the containment atmosphere following a significant beyond design-basis accident for combustible gas control and accident management, including emergency planning.

(ii) Equipment must be provided for monitoring hydrogen in the containment. Equipment for monitoring hydrogen must be functional, reliable, and capable of continuously measuring the concentration of hydrogen in the containment atmosphere following a significant beyond design-basis accident for accident management, including emergency planning.

(5) *Analyses.* Each holder of an operating license for a boiling water reactor with a Mark III type of containment or for a pressurized water reactor with an ice condenser type of containment, shall perform an analysis that:

(i) Provides an evaluation of the consequences of large amounts of hydrogen generated after the start of an accident (hydrogen resulting from the metal-water reaction of up to and including 75 percent of the fuel cladding surrounding the active fuel region, excluding the cladding surrounding the plenum volume) and include consideration of hydrogen control measures as appropriate;

(ii) Includes the period of recovery from the degraded condition;

(iii) Uses accident scenarios that are accepted by the NRC staff. These scenarios must be accompanied by sufficient supporting justification to show that they describe the behavior of the reactor system during and following an accident resulting in a degraded core.

(iv) Supports the design of the hydrogen control system selected to meet the requirements of this section; and,

(v) Demonstrates, for those reactors that do not rely upon an inerted atmosphere to comply with paragraph (b)(2)(ii) of this section, that:

(A) Containment structural integrity is maintained. Containment structural integrity must be demonstrated by use of an analytical technique that is accepted by the NRC staff in accordance with § 50.90. This demonstration must include sufficient supporting justification to show that the technique describes the containment response to the structural loads involved. This method could include the use of actual material properties with suitable margins to account for uncertainties in modeling, in material properties, in construction tolerances, and so on; and

(B) Systems and components necessary to establish and maintain safe shutdown and to maintain containment integrity will be capable of performing their functions during and after exposure to the environmental conditions created by the burning of hydrogen, including local detonations, unless such detonations can be shown unlikely to occur.

(c) *Requirements for future water-cooled reactor applicants and licensees.*[2] The requirements in this paragraph apply to all water-cooled reactor construction permits or operating licenses under this part, and to all water-cooled reactor design approvals, design certifications, combined licenses or manufacturing licenses under part 52 of this chapter, any of which are issued after October 16, 2003.

(1) *Mixed atmosphere.* All containments must have a capability for ensuring a mixed atmosphere during design-basis and significant beyond design-basis accidents.

(2) *Combustible gas control.* All containments must have an inerted atmosphere, or must limit hydrogen concentrations in containment during and following an accident that releases an equivalent amount of hydrogen as would be generated from a 100 percent fuel clad-coolant reaction, uniformly distributed, to less than 10 percent (by volume) and maintain containment structural integrity and appropriate accident mitigating features.

(3) *Equipment Survivability.* Containments that do not rely upon an inerted atmosphere to control combustible gases must be able to establish and maintain safe shutdown and containment structural integrity with systems and components capable of performing their functions during and after exposure to the environmental conditions created by the burning of hydrogen. Environmental conditions caused by local detonations of hydrogen must also be included, unless such detonations can be shown unlikely to occur. The amount of hydrogen to be considered must be equivalent to that generated from a fuel clad-coolant reaction involving 100 percent of the fuel cladding surrounding the active fuel region.

(4) *Monitoring.* (i) Equipment must be provided for monitoring oxygen in containments that use an inerted atmosphere for combustible gas control. Equipment for monitoring oxygen must be functional, reliable, and capable of continuously measuring the concentration of oxygen in the containment atmosphere following a significant beyond design-basis accident for combustible gas control and accident management, including emergency planning.

(ii) Equipment must be provided for monitoring hydrogen in the containment. Equipment for monitoring hydrogen must be functional, reliable, and capable of continuously measuring the concentration of hydrogen in the containment atmosphere following a significant beyond design-basis accident for accident management, including emergency planning.

(5) *Structural analysis.* An applicant must perform an analysis that demonstrates containment structural integrity. This demonstration must use an analytical technique that is accepted by the NRC and include sufficient supporting justification to show that the technique describes the containment response to the structural loads involved. The analysis must address an accident that releases hydrogen generated from 100 percent fuel clad-coolant reaction accompanied by hydrogen burning. Systems necessary to ensure containment integrity must also be demonstrated to perform their function under these conditions.

(d) *Requirements for future non water-cooled reactor applicants and licensees and certain water-cooled reactor applicants and licensees.* The requirements in this paragraph apply to all construction permits and operating licenses under this part, and to all design approvals, design certifications, combined licenses, or manufacturing licenses under part 52 of this chapter, for non water-cooled reactors and water-cooled reactors that do not fall within the description in paragraph (c), footnote 1 of this section, any of which are issued after October 16, 2003. Applications subject to this paragraph must include:

(1) Information addressing whether accidents involving combustible gases are technically relevant for their design, and

(2) If accidents involving combustible gases are found to be technically relevant, information (including a design-specific probabilistic risk assessment) demonstrating that the safety impacts of combustible gases during design-basis and significant beyond design-basis accidents have been addressed to ensure adequate protection of public health and safety and common defense and security.

■ 4. Section 50.46a is added to read as follows:

§ 50.46a Acceptance criteria for reactor coolant system venting systems.

Each nuclear power reactor must be provided with high point vents for the reactor coolant system, for the reactor vessel head, and for other systems required to maintain adequate core cooling if the accumulation of noncondensible gases would cause the loss of function of these systems. High point vents are not required for the tubes in U-tube steam generators. Acceptable venting systems must meet the following criteria:

(a) The high point vents must be remotely operated from the control room.

(b) The design of the vents and associated controls, instruments and power sources must conform to appendix A and appendix B of this part.

(c) The vent system must be designed to ensure that:

(1) The vents will perform their safety functions; and

(2) There would not be inadvertent or irreversible actuation of a vent.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

■ 5. The authority citation for Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

■ 6. In § 52.47, paragraph (a)(1)(ii) is revised to read as follows:

§ 52.47 Contents of applications.

(a) * * *

(1) * * *

(ii) Demonstration of compliance with any technically relevant portions of the

[2] The requirements of this paragraph apply only to water-cooled reactor designs with characteristics (*e.g.*, type and quantity of cladding materials) such that the potential for production of combustible gases is comparable to light water reactor designs licensed as of October 16, 2003.

Three Mile Island requirements set forth in 10 CFR 50.34(f) except paragraphs (f)(1)(xii), (f)(2)(ix) and (f)(3)(v);

* * * * *

Dated at Rockville, Maryland, this 10th day of September 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–23554 Filed 9–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG93

Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its licensing requirements for dry cask modes of storage of spent nuclear fuel, high-level radioactive waste, and power reactor-related Greater than Class C (GTCC) waste in an independent spent fuel storage installation (ISFSI) or in a U.S. Department of Energy (DOE) monitored retrievable storage installation (MRS). These amendments update the seismic siting and design criteria, including geologic, seismic, and earthquake engineering considerations. The final rule allows the NRC and its licensees to benefit from experience gained in the licensing of existing facilities and to incorporate rapid advancements in the earth sciences and earthquake engineering. The amendments make the NRC regulations that govern certain ISFSIs and MRSs more compatible with the 1996 amendments that addressed uncertainties in seismic hazard analysis for nuclear power plants. The amendments allow certain ISFSI or MRS applicants to use a design earthquake level commensurate with the risk associated with an ISFSI or MRS.

EFFECTIVE DATE: This final rule is effective on October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5252, e-mail: *kkm@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

In 1980, the NRC added 10 CFR part 72 to its regulations to establish licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste (HLW) (45 FR 74693; November 12, 1980). In 1988, the NRC amended part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS (53 FR 31651; August 19, 1988). Subpart E of Part 72 contains siting evaluation factors that must be investigated and assessed with respect to the siting of an ISFSI or MRS, including a requirement for evaluation of geological and seismological characteristics. ISFSI and MRS facilities are designed and constructed for the interim storage of spent nuclear fuel that has aged for at least one year, other solidified radioactive materials associated with spent fuel storage, and power reactor-related GTCC waste, that are pending shipment to a high-level radioactive waste repository or other disposal site.

The original regulations envisioned ISFSI and MRS facilities as spent fuel pools or single, massive dry storage structures. The regulations required seismic evaluations equivalent to those for a nuclear power plant (NPP) when the ISFSI or MRS is located west of the Rocky Mountain Front (west of approximately 104° west longitude), referred to hereafter as the western U.S., or in areas of known seismic activity east of the Rocky Mountain Front (east of approximately 104° west longitude), referred to hereafter as the eastern U.S. A seismic design requirement, equivalent to the requirements for an NPP (appendix A to 10 CFR part 100) seemed appropriate for these types of facilities, given the potential accident scenarios. For those sites located in the eastern U.S., and not in areas of known seismic activity, the regulations allowed for less stringent alternatives.

For other types of ISFSI or MRS designs, the regulation required a site-specific investigation to establish site suitability commensurate with the specific requirements of the proposed ISFSI or MRS. The NRC explained that for ISFSIs which do not involve massive structures, such as dry storage casks and canisters, the required design earthquake will be determined on a case-by-case basis until more experience is gained with the licensing of these types of units (45 FR 74697).

For sites located in either the western U.S. or in areas of known seismic activity in the eastern U.S., the regulations in 10 CFR part 72 currently require the use of the procedures in appendix A to part 100 for determining the design basis vibratory ground motion at a site. appendix A requires the use of ''deterministic'' approaches in the development of a single set of earthquake sources. The applicant develops for each source a postulated earthquake to be used to determine the ground motion that can affect the site, locates the postulated earthquake according to prescribed rules, and then calculates ground motions at the site.

Advances in the sciences of seismology and geology, along with the occurrence of some licensing issues not foreseen in the development of appendix A to part 100, have caused a number of difficulties in the application of this regulation. Specific problematic areas include the following:

1. Because the deterministic approach does not explicitly recognize uncertainties in geoscience parameters, probabilistic seismic hazard analysis (PSHA) methods were developed that allow explicit expressions for the uncertainty in ground motion estimates and provide a means for assessing sensitivity to various parameters. Appendix A to part 100 does not allow this application.

2. The limitations in data and geologic/seismic analyses, and the rapid evolution in geosciences have required considerable latitude in technical judgment. The inclusion of detailed geoscience assessments in Appendix A has inhibited the use of needed judgment and flexibility in applying basic principles to new situations; and

3. Various sections of Appendix A are subject to different interpretations. For example, there have been differences of opinion and differing interpretations among experts as to the largest earthquakes to be considered and ground motion models to be used, thus often making the licensing process less predictable.

In 1996, the NRC amended 10 CFR parts 50 and 100 to update the criteria

used in decisions regarding NPP siting, including geologic and seismic engineering considerations for future NPPs (61 FR 65157; December 11, 1996). The amendments added a new § 100.23 requiring that the uncertainties associated with the determination of the Safe Shutdown Earthquake Ground Motion (SSE) be addressed through an appropriate analysis, such as a PSHA or suitable sensitivity analyses in lieu of appendix A to part 100. This approach takes into account the problematic areas identified above in the earlier siting requirements and is based on developments in the technical field over the past two decades. Further, regulatory guides have been used to address implementation issues. For example, the NRC provided guidance for NPP license applicants in Regulatory Guide 1.165, ''Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion,'' and Standard Review Plan NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Reactors,'' Section 2.5.2, ''Vibratory Ground Motion,'' Revision 3. However, the NRC left appendix A to part 100 in place to preserve the licensing basis for existing plants and confined the applicability of § 100.23 to new NPPs.

The NRC is now amending 10 CFR part 72 to require applicants at some locations to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the design earthquake ground motion (DE). The use of a probabilistic approach or suitable sensitivity analyses to siting parallels the change made to 10 CFR part 100.

In comparison with an NPP, an operating dry cask ISFSI or MRS facility storing spent nuclear fuel is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS facility does not have the variety and complexity of active systems necessary to support safe operations at an NPP. Further, the robust cask design required for non-seismic considerations (*e.g.*, drop event, shielding), assure low probabilities of failure from seismic events. In the unlikely occurrence of a radiological release as a result of a seismic event, the radiological consequences to workers and the public are significantly lower than those that could arise at an NPP. The conditions required for release and dispersal of significant quantities of radioactive material, such as high temperatures or pressures, are not present in an ISFSI or MRS. This is primarily due to the low heat-generation rate of spent fuel that has undergone more than one year of decay before storage in an ISFSI or MRS, and to the low inventory of volatile radioactive materials readily available for release to the environment. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. Short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel. Furthermore, even if the short-lived nuclides were present during a fuel assembly rupture, the canister surrounding the fuel assemblies is designed to confine these nuclides.

The standards in part 72 Subparts E, ''Siting Evaluation Factors,'' and F, ''General Design Criteria,'' ensure that the dry cask storage designs are very rugged and robust. The casks must maintain structural integrity during a variety of postulated non-seismic events, including cask drops, tip-over, and wind driven missile impacts. These non-seismic events challenge cask integrity significantly more than seismic events. Therefore, the casks have substantial design margins to withstand forces from a seismic event greater than the design earthquake.

Hence, the seismically induced risk from the operation of an ISFSI or MRS is less than at an operating NPP. As a result, the NRC is revising the DE requirements for ISFSI and MRS facilities from the current part 72 requirements, which are equivalent to the SSE for an NPP.

As an additional minor change, the NRC is modifying § 72.212(b)(2)(i)(B) to require general licensees to evaluate dynamic loads, in addition to static loads, in the design of cask storage pads and areas for ISFSIs, to ensure that casks are not placed in unanalyzed conditions. Accounting for dynamic loads in the analysis of ISFSI pads and areas will ensure that pads continue to support the casks during seismic events. General licensees currently evaluate dynamic loads for evaluating the casks, pads and areas, to meet the cask design bases in the Certificate of Compliance, as required by § 72.212(b)(2)(i)(A). Therefore, the rule will not actually require any general licensees operating an ISFSI to re-perform any written evaluations previously undertaken. Specific licensees are currently required, under § 72.122(b)(2), to design ISFSIs to withstand the effects of dynamic loads, such as earthquakes and tornados.

The NRC published the proposed rule, ''Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations'' in the **Federal Register** on July 22, 2002 (67 FR 47745) for public comment. The NRC stated on September 5, 2002 (67 FR 56876) that it intended to extend the comment period for an additional 15 days to allow interested persons additional time to provide meaningful comments. The public comment period expired on October 22, 2002.

The NRC received nine comment letters on the proposed rule. These comments and the NRC responses are discussed in Section VI of this document, ''Summary of Public Comments on the Proposed Rule.''

II. Objectives

An ISFSI is designed, constructed, and operated under a part 72 specific or general license. A part 72 specific license for an ISFSI is issued to a named person upon application filed under part 72 regulations. A part 72 general license for an ISFSI is issued under 10 CFR 72.210 to persons authorized to possess an NPP license under part 50, without filing a part 72 license application. A general licensee is required to meet the conditions specified in subpart K of part 72. An MRS may be designed, constructed, and operated by DOE under a part 72 specific license.

The final rule reflects changes that are intended to (1) provide benefit from the experience gained in applying the existing regulation and from research; (2) provide needed regulatory flexibility to incorporate into licensing state-of-the-art improvements in the geosciences and earthquake engineering; and (3) make the regulations more risk informed, consistent with the Commission's recent policy.

The objectives of this final rule are to:

1. Require a new specific-license applicant for a dry cask storage facility located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and not co-located with an NPP, to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE. All other new specific-license applicants for dry cask storage facilities will have the option of complying with the requirement to use a PSHA or suitable sensitivity analyses to address uncertainties in seismic hazard analysis, or other options compatible with the existing regulation. (§ 72.103)

2. Allow new ISFSI or MRS specific-license applicants using a PSHA to select a DE appropriate for and commensurate with the risk associated with an ISFSI or MRS; and

3. Require general licensees to design cask storage pads and areas to adequately account for dynamic loads, in addition to static loads. (§ 72.212)

III. Applicability

This section clarifies the applicability of the new § 72.103 for Part 72 specific licensees, and modified § 72.212(b)(2)(i)(B) for Part 72 general licensees.

Applicability of New § 72.103

(1) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and not co-located with an NPP, will be required to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE.

(2) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and co-located with an NPP, will have the option of addressing uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, or using the existing design criteria for the NPP, for determining the DE. When the existing design criteria for the NPP are used for an ISFSI at a site with multiple NPPs, the criteria for the most recent NPP must be used.

(3) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in the eastern U.S., except in areas of known seismic activity, will have the option of addressing uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, or using a standardized DE described by an appropriate response spectrum anchored at 0.25 g (subject to the conditions in new § 72.103(a)(1)), or using the existing design criteria for the most recent NPP (if applicable), for determining the DE.

(4) The new § 72.103 is not applicable to a general licensee at an existing NPP operating an ISFSI under a part 72 general license anywhere in the U.S.

The changes apply to the design basis of both a dry cask storage type ISFSI and MRS, because these facilities are similar in design. The NRC does not intend to revise the 10 CFR part 72 geological and seismological criteria as they apply to wet modes of storage because applications for this means of storage are not expected and it is not cost-effective to allocate resources to develop the technical bases for such an expansion of the rulemaking. The NRC also does not intend to revise the 10 CFR part 72 geological and seismological criteria as they apply to dry modes of storage that do not use casks because of the lack of experience in licensing these types of facilities.

The applicability of § 72.103 is summarized in the table below.

Applicability of Amended § 72.212(b)(2)(i)(B)

The changes in § 72.212(b)(2)(i)(B), regarding the evaluation of dynamic loads for the design of cask storage pads and areas, will apply to all general licensees for an ISFSI.

The applicability of the modified § 72.212(b)(2)(i)(B) is summarized in the table below.

SUMMARY OF APPLICABILITY

[Design Earthquake Ground Motion for ISFSI or MRS Specific-License Applicants for Dry Cask Modes of Storage on or after the Effective Date of the Final Rule]

Site condition	Specific-license applicant [1]
Western U.S., or areas of known seismic activity in the eastern U.S., not co-located with NPP.	Must use PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards inevaluations [2].
Western U.S., or areas of known seismic activity in the eastern U.S., and co-located with NPP.	PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations [2], or existing NPP design criteria (multi-unit sites—use and co-located withthe most recent criteria). NPP
Eastern U.S., and not in areas of known seismic activity	PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations,[2] or existing NPP design criteria, if applicable (multi-unit sites—use the most recent criteria), or an appropriate response spectrum anchored at 0.25g (subject to the conditions in new § 72.103(a)(1)).

[1] New § 72.103 does not apply to general licensees. General licensees must satisfy the conditions specified in 10 CFR 72.212.
[2] Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

IV. Discussion

The NRC is amending certain sections of part 72 dealing with seismic siting and design criteria for a dry cask ISFSI or MRS. The NRC intends to leave the present § 72.102 in place to preserve the ISFSI licensing bases for applications before the effective date of the rule, and continue the present ISFSI or MRS licensing bases for applications for other than dry cask modes of storage. The NRC is changing the heading of § 72.102, adding a new § 72.103, and modifying § 72.212(b)(2)(i)(B).

A. Change to 10 CFR 72.102

The heading of § 72.102 will be changed to clarify that the present requirements are applicable to ISFSI or MRS specific licensees or specific-license applicants before the effective date of the rule. The requirements of § 72.102 that applied to ISFSI or MRS licensees, or license applicants for other than dry cask modes of storage will continue to apply.

B. New 10 CFR 72.103

New § 72.103 describes the seismic requirements for new specific-license applicants for dry cask storage at an ISFSI or MRS.

1. Remove Detailed Guidance From the Regulation

Part 72 currently requires license applicants for an ISFSI or MRS, in the western U.S. or in other areas of known seismicity, to comply with appendix A to part 100. Appendix A contains both requirements and guidance on how to satisfy those requirements. For example, Section IV, ''Required Investigations,'' of Appendix A states that investigations are required for vibratory ground motion, surface faulting, and seismically induced floods and water waves. Appendix A then provides detailed guidance on what constitutes an acceptable investigation. A similar situation exists in Section V, ''Seismic and Geologic Design Bases,'' of appendix A to part 100.

Geoscience assessments require considerable latitude in judgment because of (a) limitations in data; (b) changing state-of-the-art of geologic and seismic analyses; (c) rapid accumulation of knowledge; and (d) evolution in geoscience concepts. The NRC recognized the need for latitude in judgment when it amended part 100 in 1996.

However, specifying geoscience assessments in detail in a regulation has created difficulty for applicants and the NRC by inhibiting needed latitude in judgment. It has inhibited the flexibility needed in applying basic principles to new situations and the use of evolving methods of analyses (for instance, probabilistic) in the licensing process.

The NRC is adding a new section in part 72 that will provide specific siting requirements for an ISFSI or MRS instead of referencing another part of the regulations. The amended regulation will also reduce the level of detail by placing only basic requirements in the rule and providing the details on methods acceptable for meeting the requirements in an accompanying guidance document. Thus, the revised regulation contains requirements to:

(i) Evaluate the geological, seismological, and engineering characteristics of the proposed site;

(ii) Establish a DE; and

(iii) Identify the uncertainties associated with these requirements.

Detailed guidance on the procedures acceptable to the NRC for meeting the requirements are provided in Regulatory Guide 3.73, ''Site Evaluations and Design Earthquake Ground Motion for Dry Cask Independent Spent Fuel Storage and Monitored Retrievable Storage Installations.''

2. Address Uncertainties and Use Probabilistic Methods

The existing approach for determining a DE for an ISFSI or MRS, embodied in Appendix A to Part 100, relies on a ''deterministic'' approach. Using this deterministic approach, an applicant develops a single set of earthquake sources, develops for each source a postulated earthquake to be used as the source of ground motion that can affect the site, locates the postulated earthquake according to prescribed rules, and then calculates ground motions at the site.

Although this approach has worked reasonably well for the past several decades in the sense that the SSE for NPPs sited with this approach are judged to be suitably conservative, the approach has not explicitly recognized uncertainties in geosciences parameters. Because so little is known about earthquake phenomena (especially in the eastern U.S.), there have been differences of opinion and differing interpretations among experts as to the largest earthquakes to be considered and ground-motion models to be used, often making the licensing process less predictable.

Probabilistic methods that have been developed in the past 15 to 20 years for evaluation of seismic safety of nuclear facilities allow explicit incorporation of different models for zonation, earthquake size, ground motion, and other parameters. The advantage of using these probabilistic methods is their ability to incorporate different models and data sets, thereby providing an explicit expression for the uncertainty in the ground motion estimates and a means of assessing sensitivity to various input parameters. The western and eastern U.S. have fundamentally different tectonic environments and histories of tectonic deformation. Consequently, application of these probabilistic methodologies has revealed the need to vary the fundamental PSHA methodology depending on the tectonic environment of the site.

In 1996, when the NRC accepted the use of a PSHA methodology or suitable sensitivity analyses in § 100.23, it recognized that the uncertainties in seismological and geological information must be formally evaluated and appropriately accommodated in the determination of the SSE for seismic design of NPPs. The NRC further recognized that the nature of uncertainty and the appropriate approach to account for it depends on the tectonic environment of the site and on properly characterizing parameters input to the PSHA. Methods other than probabilistic methods (PSHA), such as sensitivity analyses, may be adequate for some sites to account for uncertainties. The NRC believes that certain new applicants for ISFSI or MRS specific licenses, as described in Section III, ''Applicability,'' of this document, must use probabilistic methods or other sensitivity analyses to account for uncertainties instead of using Appendix A to Part 100. The NRC does not intend to require new ISFSI or MRS specific-license applicants that are co-located with an NPP to address uncertainties because the criteria used to evaluate existing NPPs are considered to be adequate for ISFSIs, in that the criteria have been determined to be safe for NPP licensing, and the seismically induced risk of an ISFSI or MRS is considerably lower than that of an NPP, as described in Section IV of this document.

The key elements of the NRC's approach for seismic and geologic siting for ISFSI or MRS license review and approval consists of:

a. Conducting site-specific and regional geoscience investigations;

b. Setting the target exceedance probability commensurate with the level of risk associated with an ISFSI or MRS;

c. Conducting PSHA and determining ground motion level corresponding to the target exceedance probability;

d. Determining if other sources of information change the available probabilistic results or data for the site; and

e. Determining site-specific spectral shape, and scaling this shape to the ground motion level determined above.

In addition, the NRC will review the application using all available data including insights and information from previous licensing experience. Thus, the revised approach requires thorough regional and site-specific geoscience investigations. Results of the regional and site-specific investigations must be considered in applying the probabilistic method. Two current probabilistic methods are the NRC-sponsored study conducted by Lawrence Livermore National Laboratory and the Electric Power Research Institute's seismic hazard study. These are essentially regional studies. The regional and site-specific investigations provide detailed information to update the database of the hazard methodology to make the probabilistic analysis site-specific.

Applicants must also incorporate local site geological factors, such as stratigraphy and topography, and account for site-specific geotechnical properties in establishing the DE. Guidelines to incorporate local site factors and advances in ground motion

attenuation models, and to determine ground motion estimates, are outlined in NUREG–0800, Section 2.5.2.

Methods acceptable to the NRC for implementing the revised regulation related to the PSHA or suitable sensitivity analyses are described in RG 3.73.

3. Revise the Design Earthquake Ground Motion

The present DE in part 72 is based on the deterministic requirements contained in Appendix A to 10 CFR Part 100 for NPPs. In the Statement of Considerations accompanying the initial part 72 rulemaking, the NRC recognized that the required design earthquake need not be as high as for an NPP and should be determined on a ''case-by-case'' basis until ''more experience is gained with licensing of these types of units'' (45 FR 74697; November 12, 1980). With the advances in probabilistic seismic hazard evaluation techniques, over 10 years of experience in licensing dry cask storage (10 specific licenses have been issued and 9 locations use the general license provisions), and analyses demonstrating robust behavior of dry cask storage systems (DCSSs) in accident scenarios, the NRC now has a reasonable basis to consider more appropriate DE parameters for a dry cask ISFSI or MRS. Therefore, in those instances when an ISFSI or MRS specific-license applicant uses PSHA methods, the NRC will allow a DE commensurate with the lower risk associated with these facilities.

I. Factors that result in the lower radiological risk at an ISFSI or MRS compared to an NPP include the following:

a. In comparison with an NPP, an operating ISFSI or MRS is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS does not have the variety and complexity of active systems necessary to support an operating NPP. After the spent fuel is in place, an ISFSI or MRS is essentially a static operation.

b. During normal operations, the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no components carrying fluids at high temperatures or pressures during normal operations or under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat-generation rate of spent fuel that has undergone more than one year of decay before storage in an ISFSI or MRS, and to the low inventory of volatile radioactive materials readily available for release to the environment.

c. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. Short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel. Furthermore, even if the short-lived nuclides were present during a fuel assembly rupture, the canister surrounding the fuel assemblies would confine these nuclides. Therefore, the NRC believes that the seismically induced radiological risk associated with an ISFSI or MRS is significantly less than the risk associated with an NPP.

II. Additional rationale for allowing the use of a DE level commensurate with the risk associated with an ISFSI or MRS includes the following:

a. Because the DE is defined as a smooth broad-band spectrum, which envelops the controlling earthquake responses, the vibratory ground motion specified is conservative.

b. To evaluate dry cask storage systems' behavior during an earthquake, typical storage systems (one a cylindrical cask, HI-STORM 100, the other a concrete module type, NUHOMS) were analyzed for a range of earthquakes. Based on the results of the analyses, the NRC has concluded that a free-standing dry storage cask remains stable and will not tip-over, or would not slide and impact the adjacent casks during an earthquake approximately equal to the magnitude of a SSE for an NPP. Additionally, parametric studies indicated that dry cask storage systems have significant margins against tip-over and sliding, to withstand an earthquake significantly higher in magnitude than the SSE for an NPP, without releasing radioactivity. Further, a cask is analyzed for a non-mechanistic tip-over event during an earthquake, to verify that it would maintain its structural integrity, and radioactivity from spent fuel would not be released to the environment. Therefore, based on drop accident analyses and non-mechanistic tip-over event evaluations, and on the results of the generic studies for the cask behavior during an earthquake, it can be concluded that there would be no radiological consequences at a dry cask ISFSI or MRS facility due to an earthquake.

c. The rational for allowing a DE for an ISFSI or MRS to be lower than a DE for an NPP is consistent with the approach used in DOE Standard DOE–STD–1020, ''Natural Phenomena Hazards Design Evaluation Criteria for Department of Energy Facilities.''

Regulatory Guide 3.73 (formerly DG–3021) recommends an acceptable mean annual probability of exceedance (MAPE) for the DE that is commensurate with the lower risk associated with an ISFSI or MRS as compared to an NPP. The basis for the recommendation is provided in a report entitled, ''Selection of the Design Earthquake Ground Motion Reference Probability''. This report may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.* Discussion on the recommended mean annual probability of exceedance is also in Section VI of this FRN, ''Summary of Public Comments on the Proposed Rule.''

C. Change to 10 CFR 72.212(b)(2)(i)(B)

The NRC is modifying § 72.212(b)(2)(i)(B) to require that general licensees evaluate dynamic loads, in addition to static loads, in the design of cask storage pads and areas for ISFSIs to ensure that casks are not placed in unanalyzed conditions. During a seismic event, the cask storage pads and areas experience dynamic loads in addition to static loads. The dynamic loads depend on the interaction of the casks, cask storage pads, and areas. Consideration of the dynamic loads of the stored casks, in addition to the static loads, for the design of the cask storage pads and areas, will ensure that the cask storage pads and areas will perform satisfactorily during a seismic event.

The revision will also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motions. Depending on the properties of soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance. Liquefaction of the soil and instability during vibratory motion due to an earthquake may affect the cask stability.

The changes to § 72.212 will not actually impose a new burden on the general licensees because they currently need to consider dynamic loads to meet the requirements in § 72.212(b)(2)(i)(A). Section 72.212(b)(2)(i)(A) requires that general licensees perform written evaluations to meet conditions set forth in the cask Certificate of Compliance. These Certificates of Compliance require that dynamic loads, such as seismic and

tornado loads, be evaluated to meet the cask design bases. Specific licensees are currently required, under § 72.122(b)(2), to design ISFSIs to withstand the effects of dynamic loads, such as earthquakes and tornados.

V. Related Regulatory Guide and Standard Review Plans

On July 22, 2002, the NRC published DG–3021, ''Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations'' for public comment (67 FR 48956; July 26, 2002). Regulatory Guide 3.73, *Site Evaluations and Design Earthquake Ground Motion for Dry Cask Independent Spent Fuel Storage and Monitored Retrievable Storage Installations* (formerly DG–3021), provides guidance to licensees for procedures acceptable to the NRC staff for:

(1) Conducting a detailed evaluation of site area geology and foundation stability;

(2) Conducting investigations to identify and characterize uncertainty in seismic sources in the site region important for the probabilistic seismic hazard analysis (PSHA);

(3) Evaluating and characterizing uncertainty in the parameters of seismic sources;

(4) Conducting PSHA for the site; and

(5) Determining the DE to satisfy the requirements of 10 CFR Part 72.

This guide describes acceptable procedures and provides a list of references that present acceptable methodologies to identify and characterize capable tectonic sources and seismogenic sources. Section IV.B of this **SUPPLEMENTARY INFORMATION** describes the key elements of the regulatory guide. A document announcing the availability of Regulatory Guide 3.73 will be published in the **Federal Register** in the near future.

Requests for single copies of active regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to (301) 415–2289; email *distribution@nrc.gov.* Copies are available for inspection or copying for a fee from the NRC Public Document Room at 11555 Rockville Pike (first floor), Rockville, MD; the PDR's mailing address is U.S. NRC PDR, Washington, DC 20555; telephone (301) 415–4737 or 1–(800) 397–4209; fax (301) 415–3548; e-mail *pdr@nrc.gov.*

In the future, editorial changes to NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems,'' and NUREG–1567, ''Standard Review Plan for Spent Fuel Dry Storage Facilities,'' will be made. For example, the standard review plans will be updated to reference the new § 72.103 and Regulatory Guide 3.73.

VI. Summary of Public Comments on the Proposed Rule

This section presents a summary of the public comments received on the proposed rule and supporting documents, the NRC's response to the comments, and changes made in the final rule and supporting documents as a result of these comments.

The NRC received nine comment letters on the proposed rule from eight commenters. The commenters were the Nuclear Energy Institute (NEI), the U.S. Department of Energy (DOE), two nuclear power utilities, three State agencies, and one license applicant for an independent spent fuel storage installation. All the commenters agreed with the proposal to address uncertainty by requiring the use of a PSHA or suitable sensitivity analyses for an ISFSI or MRS in the western U.S., not co-located with an NPP, and in areas of known seismic activity in the eastern U.S. However, commenters were divided on the specific question for public comment related to the appropriate value for the MAPE posed by the Commission in the proposed rule. These comments are summarized in this section under the heading ''Related Regulatory Guide.'' All commenters supported the concept of requiring general licensees to evaluate both dynamic loads and static loads for ISFSI and MRS cask storage pads and areas.

Copies of the public comments are available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. A review of the comments and the NRC responses follow:

General Comments

Comment 1: A commenter stated that proposed 10 CFR 72.103(f)(1) does not comply with the notice and comment requirements of Section 553 of the Administrative Procedure Act (APA) because of the way the rule is structured. The commenter believes that the proposed rule ''is in the guise of a substantive rule,'' but that the substantive requirements are found in the draft guidance, a document which is not a rule. In the commenter's view, ''the Commission attempts to give concrete form to its proposed rule through an interpretative document, DG–3021, and the Commission thereby circumvents [APA] § 553 notice and comment rulemaking procedures,'' citing *Paralyzed Veterans of America* v. *D.C. Arena L.P.,* 117 F.3d 579 (D.C. Cir. 1997). According to the commenter, a significant defect of this structure is that the rule gives no standards against which a licensing board or intervenors may evaluate whether an applicant has complied with the rule and, instead, gives ''unbridled and unchecked discretion to the staff in determining the seismic design standard for ISFSIs sited in seismic areas.'' The proposed rule, in the commenter's view, has no force of law because it has no binding standards and thus is unenforceable. Another commenter disagreed and supported the NRC's view that the rule is substantive and in compliance with the APA.

Response: First, the NRC rejects the claim that the rule is not being promulgated in compliance with § 553 of the APA. Section 553 requires that notice of a proposed rulemaking be published in the **Federal Register**, including the terms or substance of the proposed rule, and that interested persons be given an opportunity to comment. The APA also provides an exception for interpretative rules and general statements of policy enabling those documents to be issued as final rules without prior notice and comment. In this case, the NRC has not availed itself of the exception but rather has issued both the draft guidance and the proposed rule for public comment. Thus, there has been no violation of the notice and comment requirements of Section 553 of the APA even if the guidance were to be considered part of the rule. The *Paralyzed Veterans* case, cited by the petitioner, concerned a guidance document issued by the Department of Justice which had been issued *without* prior notice and comment and raised the issue whether the Government could rely upon the guidance in an enforcement action. The court ultimately found that there was no need for the Government to rely on the guidance to enforce the regulation. Here, the guidance has been issued for comment and the NRC does not contend, as explained below, that the guidance is legally enforceable.

Second, the NRC does not agree that ''substantive requirements'' have been placed in the guidance document. Regulatory Guide 3.73 (formerly DG–3021) provides information on methods acceptable to the NRC for implementing specific parts of the rule, but it does not place any particular requirements on

applicants. As the commenter points out, ''staff regulatory guides are not regulations, do not have the force of regulations, and when challenged, are considered only one way in which an applicant may meet the regulations.''

Finally, the commenter really appears to be objecting to the NRC's risk-informed, performance-based approach in this rulemaking in lieu of the deterministic approach for determining a design earthquake embodied in Appendix A to 10 CFR Part 100. The overall performance criteria for protection against environmental conditions and natural phenomena in the design of Part 72 facilities are contained in 10 CFR 72.122(b) of the NRC's regulations. In particular, § 72.122(b)(2)(i) provides:

> Structures, systems, and components important to safety must be designed to withstand the effects of natural phenomena such as earthquakes * * * without impairing their capability to perform their intended design functions. The design bases for these structures, systems, and components must reflect:
>
> (A) Appropriate consideration of the most severe of the natural phenomena reported for the site and surrounding area, with appropriate margins to take into account the limitations of the data and the period of time in which the data have accumulated; and
>
> (B) Appropriate combinations of the effects of normal and accident conditions and the effects of natural phenomena.

These performance criteria are supplemented by the requirements of 10 CFR 72.103 governing selection of a site and determination of a DE. This new regulation provides specific siting requirements for an ISFSI or MRS instead of referencing another part of the regulations (Appendix A to Part 100). This new regulation also reduces the level of detail by placing only basic requirements in the rule and providing the details on methods acceptable for meeting the requirements in an accompanying guidance document. Thus, the new 10 CFR 72.103(f) establishes basic requirements for determining a DE for use in the design of structures, systems, and components of the ISFSI or MRS. These regulations include a requirement that the geological, seismological, and engineering characteristics of a proposed site and its environs be investigated in sufficient scope and detail to provide sufficient information to support evaluations performed to arrive at estimates of the DE (§ 72.103(f)(1)); a requirement that a DE be determined for the site (§ 72.103(f)(2)); and a requirement that uncertainties be addressed through an appropriate analysis, such as a probabilistic seismic hazard analysis or suitable sensitivity analyses (§ 72.103(f)(2)(i)). The regulation further requires determinations of the potential for surface tectonic and nontectonic deformations (§ 72.103(f)(2)(ii)); the design bases for seismically induced floods and water waves (§ 72.103(f)(2)(iii)); and the siting factors for other design conditions, such as liquefaction potential (§ 72.103(f)(2)(iv)), as well as a requirement that the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum (§ 72.103(f)(3)). More specific guidance for meeting these standards, including guidance on an acceptable reference probability, is provided in Regulatory Guide 3.73 (formerly DG–3021).

Determining whether an applicant has complied with these performance standards may be more difficult than would be the case with a prescriptive regulation; however, that does not mean that the NRC has ''unbridled discretion'' in deciding whether the standards are met nor that the standards (as opposed to the guidance) are not binding. The NRC uses informed technical judgment to determine if an application has satisfactorily met the standards. The NRC's rationale and judgment are expressed in a safety evaluation report (SER) subject to evaluation and potential challenge by members of the public. In the event of a hearing, a licensing board would have the technical skills necessary to evaluate any conflicting claims.

Comment 2: A commenter noted that, although the NRC's approach is similar to that used in the amendments issued for seismic evaluation for the siting of NPPs, the NRC has no compelling reason to follow that approach. First, the commenter argued, if the approach violates the APA, it should be rejected. Second, the commenter stated that because no new applications for siting NPPs have been submitted using the new requirements, the rule has not been put to the test. Finally, the commenter indicated that there are no data for ISFSIs that establish design basis ground motions, unlike the SSE for a nuclear power plant, which has at least some data to provide guidance to the NRC and the public.

Response: First, the NRC disagrees that either the amendments issued for the seismic evaluation of siting of NPPs or these Part 72 amendments have been issued in violation of the APA. See comment 1. Second, although no new license applications for siting of NPPs have been received to test the new requirements in 10 CFR § 100.23, the guidance associated with the use of probabilistic methods for siting of NPPs (Regulatory Guide 1.165) has been used in the PSHA prepared for a proposed ISFSI site. It is also being followed by applicants for an early site permit under 10 CFR Part 52. Finally, the NRC agrees that there are limited data for ISFSIs that establish design basis ground motions because the current Part 72 regulations for seismic design of ISFSIs are conservatively based on the nuclear power plant seismic design criteria, and thus, are not risk-informed. However, experience has been gained in the design and construction of numerous facilities using the philosophy of a graded, risk-informed approach described in the standard building codes, similar to the approach proposed in the rule for ISFSIs. The graded risk-informed approach is also used by the Department of Energy in designing its facilities for seismic loads with risks varying from conventional facilities to NPPs.

Comment 3: A commenter noted that if clear seismic standards are not established in the rule, the opportunity for interested persons to participate in a licensing proceeding involving the seismic design of an ISFSI will become essentially prohibited. This is because a panoply of specific expertise is needed to evaluate the seismic design and there is only a small universe of seismic experts. Utilizing these experts is often not feasible because of the financial burden on intervenors in obtaining highly specialized expertise to analyze probabilistic seismic risks and design of nuclear facilities.

Response: The NRC believes the standards for ISFSI or MRS facility earthquake designs are clear. See the response to Comment 1. However, the NRC recognizes that the proposed use of the probabilistic methods in seismic design of ISFSIs is more complex than the current deterministic methods of 10 CFR Part 100 Appendix A, and would require specific expertise to participate in the licensing proceedings. The NRC staff's safety evaluation report (SER) that independently assesses the applicant's method of compliance with regulations is available to assist the public in evaluating the risk of the facility and could help intervenors to focus their resources. The NRC does not intend to limit public participation in the licensing process; however, the Congress has barred the use of appropriated funds to pay the expenses of, or otherwise compensate, parties who intervene in NRC regulatory or adjudicatory proceedings.

Comment 4: A commenter stated that the proposed rule placed too much stock on the integrity of the dry storage cask. The commenter indicated that of

the 19 ISFSI licenses issued in the past decade, none were in seismic areas. The NRC has not licensed unanchored cylindrical casks in any seismic areas. The commenter noted that there are no performance data, test data, or earthquake experience data for dry casks or for ISFSIs. The commenter further stated that the rule is based on principles that are antithetical to earthquake engineering principles because, for unanchored casks, the NRC relies solely on the predictions of non-linear computer models. The commenter also stated that, up to this point, the non-linear computer model predictions of the seismic behavior of casks have not been validated with shake table data or actual performance data. The commenter also stated that without adequate and reliable performance and test data, it cannot be determined if the casks will actually provide the critical barrier described and relied upon in the rule. Another commenter stated that non-linear dynamic analyses are inherently reliable. Further, the commenter noted that proper input parameters for cask stability analyses are not elusive unknowns but can be determined from basic physical principles, and that these analyses have been shown not to be highly sensitive to changes in input parameters. Therefore, the commenter argued, shake table testing is unnecessary.

Response: The integrity of the dry storage cask during an earthquake is a key to protecting the health and safety of the public because it confines the radioactivity during a potential accident event, such as an earthquake, and prevents it from being dispersed into the environment. Contrary to traditional building designs, the cask design is not governed by stresses resulting from an earthquake, but is governed by requirements resulting from shielding, thermal, criticality, and postulated handling accidents. Therefore, the critical performance requirement for a cask is that it would remain stable and not displace excessively to impact adjacent casks. The cask stability can be determined by nonlinear dynamic analyses, considering uncertainties in engineering parameters, and using multiple computer codes. The NRC has also performed structural analyses of casks tipping and sliding. In neither case did the canister fail.

It is a common engineering practice to design and build structures, including new design concepts, based on detailed structural analyses using sound engineering principles and laws of physics, without performing confirmatory experiments. For example, new concepts in structural designs and construction of landmark structures, such as the Sears Tower, Hancock Tower, Eiffel Tower, and space vehicles were based solely on analyses.

The advent of computers has helped in the development of analytical tools, including the non-linear dynamic analyses. Results of these analyses are being used to design structures more complex than a dry storage cask. The concept of free-standing casks is not new. The buildings the NRC uses every day are free-standing on a foundation, and thus would move during an earthquake. The analytical tools for non-linear structural analyses are verified and validated using multiple computer codes and available experimental data. Therefore, shake table tests or actual performance data are not necessary.

Comment 5: A commenter requested a rule to establish a definitive design basis earthquake at a return period level [the return period of an earthquake is an inverse of the mean annual probability of exceedance (MAPE) of the earthquake] greater than 2,000 years that is tied to defined risk and performance goals.

Response: The NRC does not agree that we must establish a definitive design basis earthquake by rule. The current regulations in § 72.122(b)(2)(i), require that the structures, systems, and components of an ISFSI or MRS must be designed to withstand the effects of natural phenomena, such as earthquakes, without impairing their capability to perform their intended design functions. For earthquakes, these requirements are then supplemented by the requirements at §§ 72.102, 72.103, and 72.122 for detailed site investigations and appropriate consideration of the most severe of the natural phenomena and associated probability of occurrence, including consideration of uncertainties, in the prediction of earthquakes. This approach is consistent with the NRC's philosophy of using risk-informed, performance-based regulations. In a risk-informed, performance-based approach, the design of the ISFSI or MRS facility is based on an assessment of the radiological risk (potential for adverse consequences) due to an earthquake. Thus, specifying a value for the reference probability in the rule would preclude applicants from considering structures, systems, and components with risks other than the risk associated with the specified reference probability.

Comment 6: A commenter stated that the supplementary information in the final rule should state that the NRC's policy for promulgating risk-informed regulations was a primary motivation for the rule changes.

Response: The NRC agrees that the supplementary information for the final rule should more clearly state that the rule was amended, in part, to conform to the Commission's recent policy to increase the use of risk insights and information in its regulatory applications. An additional statement has been added to Section II, Objectives, of the Supplementary Information portion of this document, that states the intent to revise the regulation in accordance with this policy.

Applicability of Proposed § 72.103

Comment 7: A commenter requested clarification of the proposed rule so that applicants for an ISFSI co-located with an NPP have the option of using the existing DE of the NPP without any further evaluations and that this applies to all sections of the rule. The commenter pointed out that the proposed amendments at §§ 72.103(a)(2) and 72.103(b), as well as explanatory statements made in the proposed rule indicate that applicants for an ISFSI that are co-located with an NPP have the option of using the existing NPP design criteria without additional evaluations, but that this option is not identified in § 72.103(f).

Response: To further clarify the NRC's intent that an applicant for an ISFSI that is co-located with an NPP has the option of using the existing DE of the NPP without the need to undertake any additional evaluations of the sort described in § 72.103(f), the introductory phrase of that section has been modified so that it now reads: ''Except as provided in paragraphs (a)(2) and (b) of this section, the DE for use in the design of structures, systems, and components must be determined as follows.''

Comment 8: Two commenters stated that the criteria presented for establishing the DE for ISFSI and MRS sites at existing NPPs allows for the use of the existing NPP SSE as one alternative. This alternative is key to ensuring that significant new probabilistic ground motion studies are not required at existing NPP sites.

Response: The commenters are correct. The regulatory changes allowing the licensee flexibility to use the existing SSE for an NPP at co-located ISFSIs or MRSs means that new studies are not required at ISFSIs or MRSs co-located with NPPs.

Alternative of Adopting 10 CFR 100.23

Comment 9: One commenter recommended withdrawing the proposed rule and adopting the option

of directing new applicants for specific licenses to comply with 10 CFR 100.23 in its entirety, including conforming the DE to the SSE criteria. The commenter noted that by adopting § 100.23 in its entirety, there would be no need to make distinctions among locations of facilities and the rule would incorporate state-of-the-art improvements in the geosciences and earthquake engineering and would allow uncertainty to be addressed. The commenter further noted that NRC had cited its 10 years of experience in reviewing dry cask storage installation applications as a reasonable basis for allowing an exceedance probability greater than that applied to a nuclear power plant, but pointed out that this was 10 years of analytical, not practical experience. In the commenter's view, this lack of practical experience, and the fact that a probabilistic analysis is, by its very nature, risk-informed with respect to uncertainty, means that there does not seem to be a quantifiable safety basis for any exceedance margin other than that now applied to seismic analysis for nuclear power plant proposals. The commenter stated that, absent any definitive experience, the seismic design criteria for an ISFSI should be no less protective than that of a nuclear power plant.

Response: The NRC disagrees that new applicants for specific licenses should comply with § 100.23 in its entirety, including conforming the DE to the SSE criteria. Adopting the recommendation would fail to recognize the differences in risk between an NPP and an ISFSI or MRS facility in seismic design requirements. This is counter to the Commission policy encouraging development of risk-informed, performance-based regulations, and the Commission's Performance Goals.

The NRC acknowledges that actual earthquake performance data for ISFSI facilities are not available and thus that NRC's decision to allow an exceedance probability greater than that applied to a nuclear power plant is not based on practical experience. However, NRC has gained sufficient analytical experience to understand the performance of these facilities, by reviewing the analyses of these facilities performed by the licensees, and by performance of independent analyses. Additionally, experience has been gained in the design and construction of numerous facilities using the philosophy of a risk-informed approach described in the standard building codes, similar to the one proposed in the rule for ISFSIs. The risk-informed approach is also used by the Department of Energy in designing its facilities for seismic loads with risks varying from conventional facilities to NPPs. NRC staff's analyses show that ISFSI storage casks are sufficiently robust, due to design requirements other than for earthquakes, that there is no release of radioactivity at an ISFSI site with a DE at a magnitude equal to the SSE for a NPP. This analytical experience provides a basis for allowing an exceedance probability greater than that applied to a nuclear power plant.

Proposed Change to 10 CFR 72.103

Comment 10: With respect to the provision in § 72.103(b) that sites ''that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided,'' a commenter stated that the definition of ''range of strong near-field ground motion'' is not well defined but is often believed to be about 15 km. The commenter noted that this is a very large set-back from faults. The commenter argued that the key issue is that the design ground motion should represent the conditions at the site. If a site is located close to a large capable fault, then near-fault effects should be incorporated into the design ground motions rather than excluding these site locations.

Response: The NRC agrees with the comment. The sentence: ''Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided.'' has been removed from § 72.103(b). Section 72.103(f)(2)(iv) requires an evaluation of the effects of vibratory ground motion that may affect the design and operation of the proposed ISFSI or MRS. Therefore, near-fault effects must be included in the development of the ground motion used in design.

Comment 11: One commenter suggested removing the distinction in § 72.103 between western U.S. and eastern U.S. The commenter stated that the characterization of areas of known seismicity east of the Rocky Mountain Front as including three specific areas is misleading. The commenter argued that the entire region of the U.S. east of the Rocky Mountain Front is subject to earthquake occurrence and that one area should not be treated differently from another for the purpose of assessing seismic sources. Further, the commenter stated that 10 CFR part 100, appendix A, does not allow for less stringent alternatives for any area. Rather, the commenter noted, the fundamental requirements of that regulation apply uniformly to all regions of the U.S., independent of variations in the local rate of seismicity.

Response: In specifying the criteria for determining the DE, the current part 72 regulations distinguish between the western U.S. and the eastern U.S. Although the entire eastern U.S. is subject to earthquake occurrence, the areas east of the Rocky Mountain Front, except in specific areas of known seismic activity, do not experience significant seismic activity. Therefore, the use of an appropriate seismic response anchored at 0.25 g is considered as bounding for the design. However, for the western U.S. there is significant seismic activity varying from region to region. Therefore, it is not practical to use a bounding approach in specifying the DE for those sites.

However, if the applicant chooses the option of performing the PSHA for a site located in the eastern U.S., as allowed in § 72.103(a)(2), the seismic sources are assessed with the same rigor as the seismic sources for the PSHA performed for a site located in the western U.S. (§ 72.103(f)). In this case, the regulatory requirements of assessing the seismic sources for the PSHA method would apply uniformly to all regions of the U.S., independent of variations in the local rate of seismicity.

Comment 12: One commenter suggested inserting the word ''sites'' after ''NY'' in the first sentence of § 72.103(a)(1) to be consistent with language in § 72.102.

Response: The NRC agrees with the commenter's suggestion. The word ''sites'' will be inserted after ''NY'' in the first sentence of § 72.103(a)(1) to be consistent with language in § 72.102. In addition, other minor editorial changes have been made to this sentence.

Remove Detailed Guidance From the Regulation

Comment 13: One commenter stated that removing detailed guidance from the regulation that is related to analyzing non-seismic factors affecting geologic stability of the site would allow excessive discretion for the applicant and would result in too much uncertainty for a safety evaluation. This commenter noted that removing requirements for specific types of evaluation also removes the certainty for both the license applicant and the public as to what is expected during a review. The commenter requested retaining appendix A of part 100 as requirements for licensing.

Response: See the response to Comment 1.

Comment 14: A commenter questioned NRC's statement explaining that NRC proposed to remove detailed guidance from the regulation, in part, because ''specifying geoscience assessments in detail in a regulation has created difficulties for applicants and

the NRC by inhibiting needed latitude in judgment [and] [i]t has inhibited the flexibility needed in applying basic principles to new situations.'' This commenter asked for an explanation as to how and when latitude and flexibility in judgment and in applying basic principles to new situations because geoscience assessments were specified in detail in a regulation, were inhibited.

Response: The current regulation (§ 72.102) requires that for areas of known potential seismic activity, seismicity will be evaluated by the techniques of appendix A to part 100. appendix A contains both requirements and guidance on how to satisfy the requirements. For example, Section IV, ''Required Investigations,'' of appendix A, states that investigations are required for vibratory ground motion, surface faulting, and seismically induced floods and water waves. Appendix A then provides detailed guidance on what constitutes an acceptable investigation. Such investigations require considerable latitude in judgment. This latitude in judgment is needed because of limitations in data and rapidly evolving state-of-the-art geologic and seismic analyses.

However, having geoscience assessments detailed and cast in a regulation has created difficulty for applicants and the NRC in terms of inhibiting the use of needed latitude in judgment. Also, it has inhibited flexibility in applying basic principles to new situations and the use of evolving methods of analyses (for instance, probabilistic) in the licensing process.

As an example, a prescriptive requirement of applying the capable fault criteria (see part 100, appendix A, § III(g)) to sites in California meant conducting investigations and analyses for surface rupture potential. If a fault does not cause a surface rupture (blind fault), the fault would not be considered a capable fault under the appendix A criteria, and thus would not be considered in determining the DE. This would lead to seismic hazard at a facility which would be not conservative. This has been demonstrated by the occurrences of the 1989 Loma Prieta, 1992 Petrolia, and 1994 Northridge earthquakes during which the causative faults did not rupture ground surface. On the other hand, the young faults, the last movements of which may satisfy the appendix A criteria for classifying them as capable faults, may not be capable faults in the true meaning of the criteria because the most recent displacements on them may be related to non-tectonic natural phenomena. In this case, use of the appendix A criteria would lead to a finding of seismic hazard at a facility which would be overly conservative. Inclusion of detailed criteria or specific numbers in the regulation prevents a scientific evaluation of methodologies and approaches that advance with the state of the art, and the rule eventually becomes a hindrance to the exercise of rational judgement.

Address Uncertainties and Use Probabilistic Methods

Comment 15: A commenter urged revision of § 72.103 to continue to allow an applicant located in the western U.S. or in areas of known seismic activity in the eastern U.S., and not co-located with an NPP, to use a deterministic analysis similar to the analysis specified in appendix A to 10 CFR part 100, for developing design earthquake ground motions because a utility may decide to perform seismic hazards analysis on deterministic bases that are more conservative than the proposed rule.

Response: In using the deterministic approach for determining a SSE for a nuclear reactor site embodied in appendix A to 10 CFR part 100, there have often been differences of opinion and differing interpretations among experts as to the largest earthquakes to be considered and ground-motion models to be used. This often makes the licensing process relatively unstable. Over the past decade, analysis methods for incorporating these different interpretations have been developed and used. These ''probabilistic'' methods have been designed to allow explicit incorporation of different models for zonation, earthquake size, ground motion, and other parameters. The advantage of using these probabilistic methods is the ability to incorporate different models and different data sets and weight them using judgments as to the validity of the different models and data sets. This process provides an explicit expression for the uncertainty in the ground motion estimates and a means of assessing sensitivity to various input parameters.

Section 72.103 explicitly recognizes that there are inherent uncertainties in establishing the seismic and geologic design parameters and requires the use of a probabilistic seismic hazard methodology capable of propagating uncertainties to address these uncertainties. The rule further recognizes that the nature of uncertainty and the appropriate approach to account for it depend greatly on the tectonic regime and parameters, such as the knowledge of seismic sources, the existence of historical and recorded data, and the understanding of tectonics. Therefore, methods other than the probabilistic methods, such as sensitivity analyses, may be adequate for some sites to account for uncertainties.

Consistent with § 100.23 for an NPP, § 72.103 does not allow the use of the deterministic methods in appendix A to 10 CFR part 100, to determine the DE because the deterministic methods do not account for the uncertainties in the seismic hazard analysis. However, § 72.103 allows the applicant to use methods other than the probabilistic methods, such as sensitivity analyses, to account for uncertainties. Additionally, § 72.103 allows a utility applying for a specific license for an ISFSI co-located at an NPP, the option of using the seismic design criteria of the NPP, which may be based on the deterministic methods of appendix A to 10 CFR part 100.

For these reasons, the NRC declines to amend § 72.103 as suggested by the commenter. However, a utility applying for a specific license for an ISFSI co-located at an NPP has the option of using the seismic design criteria of the NPP.

Comment 16: A commenter stated that the use of the term ''uncertainty'' in the Background section of the proposed rule (67 FR 47746) is ambiguous, and suggested that the term be revised to ''aleatory uncertainty''. The commenter stated that the report ''Recommendations for Probabilistic Seismic Hazard Analysis: Guidance on Uncertainty and Use of Experts,'' NUREG/CR–6372 (SSHAC), distinguishes between ''aleatory'' and ''epistemic'' uncertainties. The deterministic approach can explicitly recognize epistemic uncertainty just as in the probabilistic approach. The deterministic approach does not explicitly include all components of aleatory variability. The commenter noted that sensitivity analyses are generally intended for addressing epistemic uncertainty, not aleatory variability.

Response: Despite extensive advances in seismic knowledge in recent years by a large and active community of researchers around the world, there are still major gaps in the understanding of the mechanisms that cause earthquakes. These gaps in understanding mean that in any seismic hazard analysis, either deterministic or probabilistic, there are inevitably significant uncertainties in the numerical results. These uncertainties can be classified into two different categories: (1) epistemic uncertainty which is due to lack of knowledge because the scientific understanding is imperfect for the

present, but is of a character that in principle is reducible through further research; and (2) aleatory uncertainty which is due to the randomness of seismic events and, in principle, cannot be reduced. As stated in the SSHAC report, ''The division between the two different types of uncertainty, epistemic and aleatory, is somewhat arbitrary, especially at the border between the two. This is because, conceptually, some of the processes and parameters whose uncertainties the NRC will characterize here as aleatory (''random'') may be partially reducible through more elaborate models and/or further study''. As stated further in the SSHAC report, ''the PSHA that does not deal appropriately with both the epistemic and the aleatory uncertainties must be considered inadequate.'' Based on this, the term ''uncertainty'' included in the proposed rule is appropriate.

Revise the Design Earthquake Ground Motion

Comment 17: A commenter stated that performance standards are not clearly articulated in the proposed rule. The commenter also stated that before the design standard is lowered, the performance standards or goals by which the proposed changes were evaluated should first be identified.

Response: The current regulations in § 72.122(b)(2)(i) require that the structures, systems, and components of an ISFSI or MRS must be designed to withstand the effects of natural phenomena, such as earthquakes, without impairing their capability to perform their intended design functions. For earthquakes, these requirements are then supplemented by the §§ 72.102 and 72.103 requirements for the detailed site investigations and consideration of uncertainties in the prediction of earthquakes. This approach is consistent with the Commission's philosophy of using risk-informed, performance-based regulations. In a risk-informed, performance-based approach, the design of the facility is based on considering the risk (potential for adverse consequences) due to an earthquake.

Comment 18: One commenter is concerned that lowering the existing DE may result in a concomitant lowering of the design basis for locally-sourced tsunamis. The commenter is concerned because the most likely scenario for release of radiation in a coastal setting would be damage to an ISFSI or MRS during a major earthquake, followed by inundation of the facility by a tsunami.

Response: Section 72.103(f)(1) requires consideration of actual or potential geologic and seismic effects at the proposed site, including locally-sourced tsunamis. Potential inundation of the facility by a tsunami is required to be addressed in the design of the facility under § 72.122(b)(2). Under the amended rule, the tsunami magnitudes corresponding to the DE would be lower than for a nuclear power plant. However, an earthquake similar in magnitude to the SSE for an NPP would not damage an ISFSI or MRS facility, thus no release of radioactivity would occur even if the facility were inundated by a resulting locally-sourced tsunami.

Comment 19: A commenter stated that in order to issue a coastal development permit in California the State or a local government must make a finding that the proposed ISFSI will minimize risks to life and property in areas of high geologic hazard, and assure stability and structural integrity of the proposed coastal development. The commenter noted that, for the San Onofre Nuclear Generating Station (SONGS) ISFSI, the required finding was able to be made by the State only because the applicant proposed a seismic design standard far in excess of the SSE for the co-located NPP. The commenter indicated that such a finding may not be possible at future ISFSI sites if the applicant submits a design standard lower than those required for an NPP. The commenter stated that the proposed rule change makes approval of coastal development permits in California for future ISFSIs difficult at best.

Response: The NRC sees no reason why the rule would make this finding difficult. The rule ensures adequate protection of public health and safety in all environs. The close proximity of faults or populations are considered in the regulations (for example, the dose requirements contained in §§ 72.104(a) and 72.106(b)). Applying a risk-informed approach to seismic design of ISFSIs takes these factors into account and the analyses indicate that protection of public health and safety are adequately addressed.

Proposed Change to 10 CFR 72.212(b)(2)(i)(B)

Comment 20: Two commenters noted that although the proposed change to 10 CFR 72.212(b)(2)(i)(B) to require that the cask storage pads and areas be designed to adequately support dynamic loads, as well as static loads, of the stored casks, may require more analytical effort than the static load evaluations that some licensees had attempted to utilize in the past, they find the new requirements to be technically correct and support the concept that the seismic evaluation should be conducted using state-of-the-art structural dynamics principles, including consideration of dynamic loads. One commenter had no objection to the portion of the proposed rule that would require design of cask storage pads and areas to adequately account for dynamic loads. Another commenter stated that requiring this evaluation for storage pads and areas clearly improves the assurance of safety.

Response: The commenters support the NRC's decision to require evaluation of dynamic loads for storage cask pads and areas. Further, general licensees currently consider dynamic loads for evaluating the casks, pads and areas to meet the cask design bases in the Certificate of Compliance, as required by 10 CFR 72.212(b)(2)(i)(A); therefore, the rule change will not actually impose a new burden on the general licensees.

Related Regulatory Guide

Comment 21: A commenter stated that Draft Regulatory Guide DG–3021 ''is short on firm standards'' because, although it recommends a DE at a MAPE of 5E–4, it also allows an applicant to demonstrate that the use of a higher probability of exceedance value would not impose any undue radiological risk to public health and safety. Thus, the draft guidance, in the commenter's view, ''leaves open the possibility of an even lower standard for seismic sites.'' Another commenter defends the guidance that an applicant could propose a higher probability of exceedance value as being an exemption to what the commenter sees as the norm being established in DG–3021.

Response: Section 72.103(f)(2)(i) of the rule requires that an applicant include a determination of the DE for the site, considering the results of the investigations required by paragraph (f)(1) and addressing uncertainties through an appropriate analysis, such as a PSHA or suitable sensitivity analyses. Regulatory Guide 3.73 (formerly DG–3021) states that a mean annual probability of exceeding the DE of 5E–4 is recommended to be used in conjunction with the PSHA for determining the DE. As the commenter notes, the draft guidance also indicated that ''[t]he use of a higher reference probability will be reviewed and accepted on a case-by-case basis.'' This statement was made in recognition of the fact that a regulatory guide does not establish legally-binding requirements. An alternative reference probability would not be an exemption from a requirement, but would be an alternative proposal which would need to be demonstrated to be acceptable. Thus, it is conceivable that an applicant could propose a higher MAPE value that the NRC staff would then have to consider. Although this is necessarily

the case for recommendations suggested in guidance documents, the NRC did not mean to imply that it viewed an applicant's ability to make the necessary safety case for a higher MAPE as being a likely prospect. To avoid any such implication, that sentence has been removed from the final guidance.

Comment 22: One commenter stated that a DE at a MAPE of 5E–4 (2,000 year return period) is not defensible. The commenter said that there are numerous standards that already use a DE at a MAPE of 4E–4 (2,500 year return period), including DOE Standard 1020–2000. The commenter noted that DOE's standard is inextricably tied to meeting performance and risk goals. Further, the commenter indicated that certain buildings, such as hospitals, must meet a DE at a MAPE of 4E–4 (2,500 year return period), as must interstate bridges in the State of Utah. The commenter stated that, at a minimum, a standard lower than these cannot be adopted.

Response: The NRC disagrees with the commenter that the proposed standard for the DE at a MAPE of 5E–4 (2,000 year return period) is lower than the DOE Standard DOE–STD–1020–2002, or the other standards, such as the International Building Code (IBC–2000 Code).

According to the DOE Standard DOE–STD–1020–2002, ISFSIs can be classified as Performance Category 3 (PC–3) facilities. For PC–3 facilities, the seismic design forces for the DE are initially determined at 90 percent of the DE at a MAPE of 4E–4 (2,500 years return period). This brings the DE levels to approximately a MAPE of 5E–4 (2,000 year return period), specified in the earlier DOE 1020 standard, DOE–STD–1020–94. The Foreword of the DOE–STD–1020–2002 explains the change in the return period as follows:

''It is not the intent of this revision to alter the methodology for evaluating PC–3 facilities, nor to increase the performance goal of PC–3 facilities, by increasing return period for the PC–3 from a 2,000-year earthquake to a 2,500-year earthquake. Rather, the intention is more for convenience to provide a linkage from the NEHRP maps and DOE Standards.''

Therefore, use of the reference probability of 5E–4/yr (2,000 year return period), for the ISFSI or MRS facility DE, would be consistent with that used in the DOE Standard DOE–STD–1020, for similar type facilities.

For the IBC–2000 Code, the commenter is incorrectly comparing the ISFSI or MRS DE at a MAPE of 5E–4 (2,000 year return period), with the Maximum Considered Earthquake (MCE) at a MAPE of 4E–4 (2,500 year return period). The DE, according to the IBC–2000 Code, is two-thirds of the MCE, which is equivalent to a DE at a MAPE of 1.1E–3 (909 year return period) earthquake in the western United States, and a DE at a MAPE of 7E–4 (1,430 year return period) in the eastern United States. Thus, the DE for the ISFSI or MRS facility included in DG–3021 at a MAPE of 5E–4 is greater than the IBC Code DE design level.

The NRC agrees that hospital building structures and bridges having critical national defense functions are designed for the DE at a MAPE of 4E–4 (2,500 year return period). These structures are generally occupied by a significant number of people. Therefore, these structures are designed for loads greater than those for traditional buildings to limit building deformations, and to minimize human losses due to an earthquake. The ISFSI or MRS facility, on the other hand, has a relatively small number of people occupying the Canister Transfer Building at any one time.

Comment 23: A commenter requested that the regulatory guide specify a DE at a MAPE of 1E–4 (10,000 year return period), consistent with the requirement for NPPs. This commenter believes that meeting NPP standards would be easier at an ISFSI or MRS due to the relative simplicity of construction and robust character of the structures as compared to an NPP.

Response: The NRC disagrees with the commenter and believes that the proposed DE at a MAPE of 5E–4 (2,000 year return period) for an ISFSI or MRS facility is adequate for protecting public health and safety. The seismically induced risk from the operation of an ISFSI or MRS is less than from the operation of an NPP, and based on the review of the current seismic design practice, the proposed DE design level is reasonable and consistent with the NRC's policy of risk-informed, performance-based regulations. Details of the NRC's review for the proposed DE level are provided in the report, ''Selection of Design Earthquake Ground Motion Reference Probability''. This report may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

The NRC agrees with the commenter that the cask structure is simple in construction and robust in character resulting from the design considerations other than earthquake effects. Earthquake loads and the DE level would not govern the cask design. However, this is not the case in the design and stability evaluation of other ISFSI or MRS facility structures, systems, and components, such as the concrete pad, foundation, and the canister transfer building. Designs of these structures, systems, and components depend on the DE level. Further, because of the inherent safety margins in the design criteria in NUREG–1536 and NUREG–1567, the structures, systems, and components designed for a DE at a MAPE of 5E–4 (2,000 year return period) would be able to withstand a DE at a MAPE of 1E–4 (10,000 year return period consistent with the NPP requirements) without impairing the ability to meet the Part 72 dose limits for protecting public health and safety. Therefore, it is an unnecessary burden on the applicant to require the ISFSI or MRS facility to design for a DE at a level consistent with NPP requirements.

Comment 24: Two commenters stated that the seismic design standard (MAPE of 5E–4 (2,000 year return period)) is less protective than the seismic standard for municipal solid waste landfills in California (maximum credible earthquake (MCE) of 4E–4 (2,500 year return period)), and the International Building Code (MCE of 4E–4 (2,500 year return period)), both of which are more stringent than the proposed rule. One commenter is concerned that a DE at a MAPE of 5E–4 (2,000 year return period) may not provide an adequate margin of safety to protect the public.

However, two other commenters stated that the rigor of the seismic evaluation criteria and the conservatism of the seismic design requirements significantly exceed those in modern conventional building codes. One of the commenters stated that the annual probability of unacceptable seismic performance for a dry cask ISFSI designed to a DE at a MAPE of 5E–4 (2,000 year return period) will be substantially less than that of an essential or hazardous facility designed to the modern conventional building code for which the DE was established at 67 percent of the MCE of 4E–4. Another commenter stated that the level of safety for a dry cask storage facility designed to a DE at a MAPE of 5E–4 (2,000 year return period) provides at least twice the level of safety attained by facilities designed under the International Building Code.

Response: The NRC disagrees with the commenters that the seismic design standard (MAPE of 5E–4) is less protective than the seismic standard for

municipal solid waste landfills in California (Code of Regulations Section 66264.25(b), and the International Building Code—2000 (IBC–2000). The California standard requires the municipal waste landfills to be designed to withstand the maximum credible earthquake (MAPE of 4E–4) of the IBC–2000 without decreasing the level of public health and environmental protection. The cask and the cask transfer building at an ISFSI or MRS facility, designed to a DE at a MAPE of 5E–4, has the capacity to withstand earthquakes of greater magnitude than the one associated with the MAPE of 4E–4. This is because of the conservatism in the seismic evaluation criteria and of NRC's NUREG–1536 and NUREG–1567, which significantly exceed those in modern conventional building codes. Additionally, the risk of the ISFSI or MRS facility to public health and safety is lower than the risk for hazardous waste and municipal solid waste landfills because the spent nuclear fuel is contained within a sealed steel cask in an isolated facility away from the public, with a controlled boundary at a minimum distance of 100 m. Landfills, on the other hand, may be open and in close proximity to public areas.

Comment 25: Three commenters stated that the proposed rule provided no basis or quantitative analysis to justify lowering the DE to any particular value. One of these commenters indicated that absent any quantitative evidence justifying a particular value, the conservative, precautionary approach of requiring ISFSIs and MRSs to meet the same design standard as a nuclear power plant is most appropriate. One of these commenters noted that the adequacy of the MAPE should be addressed with respect to the change in the DE. The commenter stated that this could be addressed by using the higher proposed MAPE versus what is currently required and then determining if the change in the level of risk of a release is significant or not.

Response: The DE level proposed in the draft regulatory guide was selected based on the fact that the ISFSI or MRS risk is lower than that of an NPP and on the fact that this level is consistent with the hazard levels used in the nuclear industry for similar facilities. Details of the NRC's analyses for establishing the DE level are provided in the report, ''Selection of Design Earthquake Ground Motion Reference Probability''. This report may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

Comment 26: Two commenters strongly endorsed the proposal to lower the DE. The commenters stated that the DE provided in the draft regulatory guide at a MAPE of 5E–4 (2,000 year return period) provides a level of relief in establishing the DE that is completely consistent with the risk-informed regulation policy and is an excellent example of the application of the policy. One commenter stated that the philosophy of applying a graded approach to seismic design requirements for facilities of differing risks has been in existence for more than 30 years. The commenter described DOE's approach for seismic design requirements for DOE facilities, which span a range of potential risks. The commenter went on to state that based on the amount of radioactive material stored in a large dry cask ISFSI, the resulting classification using the DOE approach would result in a design standard with a MAPE of 5E–4. The commenter stated that considering the minor radiological consequences from a single canister failure and a lack of a credible mechanism to cause such a failure from a seismic event would suggest that this design criteria level is more than adequately conservative for a dry cask ISFSI.

Response: The commenters support the NRC's recommendation of the seismic design earthquake level to a MAPE of 5E–4 (2,000 year return period).

Finding of No Significant Environmental Impact: Availability

Comment 27: Three commenters challenged the assertion that the NRC has considerable experience in licensing dry cask storage systems and analyzing cask behavior. One commenter noted that the NRC has licensed only four ISFSIs in the western U.S., the most seismically active part of the country, and none as close to major plate-boundary faults as the three planned for coastal California. The commenters also said that analytical experience in licensing does not equate with practical experience. One commenter stated that this will only be achieved when an ISFSI experiences strong ground motions as a result of a major earthquake. As a result, the commenter believes that neither the specific nor general licenses issued have been tested.

Response: As discussed in the NRC response to Comment 4, cask stability can be evaluated with adequate reliability by using non-linear dynamic analyses because the concept of free-standing structures is not a new one. One does not need to test all structures prior to using them, provided structures are simple and can be reliably analyzed.

Regulatory Analysis

Comment 28: A commenter noted that the proposed changes impose no new burdens on establishing the DE for an ISFSI over the current requirements in 10 CFR part 72.

Response: The NRC's analysis actually indicates that there would be an overall reduction in the total burden placed on licensees from these changes. The estimate of values and impacts to a specific-license applicant indicates additional costs of $100,000 for addressing uncertainties in seismic hazard analysis. In some cases, ISFSI specific-license applicants have sought exemptions from the design requirements contained in § 72.102, considering site characteristics and other factors. The rule would reduce or eliminate the need for these exemption requests by reducing the DE level for certain structures, systems, and components, resulting in a savings of $150,000 per license applicant. Further, no structures, systems, and components would be required to be designed to withstand a DE at a MAPE of 1E–4 (equivalent to the SSE of an NPP), resulting in lower analytical and certain capital costs. The overall effect of the rule would be a cost savings to new specific-license applicants. However, the amount of these savings is highly site-specific, depending on site characteristics and the specified DE level.

Finally, the rule will change § 72.212(b)(2)(i)(B) to require written evaluations, prior to use, establishing that cask storage pads and areas have been evaluated for the static and dynamic loads of the stored casks. There are no additional costs associated with evaluating cask pads and areas for dynamic loads because general licensees are already required to consider dynamic loads to meet the cask design basis of the Certificate of Compliance under § 72.212(b)(i)(A).

VII. Summary of Final Revisions

This final rule will make the following changes to 10 CFR part 72:

Section 72.9 Information collection requirements: OMB approval

In § 72.9, the list of sections where approved information collection requirements appear is amended to add § 72.103.

Section 72.102 Geological and seismological characteristics (Current Heading)

Section 72.102 Geological and seismological characteristics for applications before October 16, 2003 and applications for other than dry cask modes of storage (New Heading)

The heading of § 72.102 is revised because § 72.103 is added for ISFSI or MRS applications after the effective date of the rule. Section 72.103 will only apply to dry cask modes of storage. Therefore, the heading of § 72.102 is being modified to show the revised applicability of this section. The requirements of § 72.102 will continue to apply for an ISFSI or MRS using wet modes of storage or dry modes of storage that do not use casks.

The NRC does not intend for existing part 72 licensees to re-evaluate the geological and seismological characteristics for siting and design using the revised criteria in the changes to the regulations. These existing facilities are considered safe because the criteria used in their evaluation have been determined to be safe for NPP licensing, and the seismically induced risk of an ISFSI or MRS is significantly lower than that of an NPP. The change leaves the current § 72.102 in place to preserve the licensing bases of present ISFSIs.

Section 72.103 Geological and seismological characteristics for applications for dry cask modes of storage on or after October 16, 2003

The trend towards dry cask storage has resulted in the need for applicants for new licenses to request exemptions from § 72.102(f)(1), which requires that for sites evaluated under the criteria of Appendix A to Part 100, the DE must be equivalent to the SSE for an NPP. By making § 72.102 applicable only to existing ISFSIs and by providing a new § 72.103, the revised rule is intended to preclude the need for exemption requests from new specific-license applicants.

The new requirements in § 72.103 parallel the requirements in § 72.102. However, new specific-license applicants for sites located in either the western U.S. or in the eastern U.S. in areas of known seismic activity, and not co-located with an NPP, for dry cask storage applications, on or after the effective date of this rule, will be required to address the uncertainties in seismic hazard analysis by using a PSHA or sensitivity analyses instead of using the deterministic methods of Appendix A to Part 100 without sensitivity analyses. Applicants located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and co-located with an NPP, have the option of using the PSHA methodology or suitable sensitivity analyses for determining the DE, or using the existing design criteria for the NPP. This change to require an understanding of the uncertainties in the determination of the DE will make the regulations compatible with 10 CFR 100.23 for NPPs and will allow the geological and seismological criteria for ISFSI or MRS dry cask storage facilities to be risk-informed.

New § 72.103(a)(1) provides that sites located in eastern U.S. and not in areas of known seismic activity, will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g. Section 72.103(a)(1) will parallel the requirements currently included in § 72.102(a)(1).

New § 72.103(a)(2) provides that applicants conducting evaluations in accordance with § 72.103(a)(1) may use a standardized DE described by an appropriate response spectrum anchored at 0.25 g. These requirements parallel the requirements currently included in § 72.102(a)(2). Section 72.102(a)(2) provides an alternative to determine a site-specific DE using the criteria and level of investigations required by Appendix A to Part 100. New § 72.103(a)(2) also provides, as an alternative, that a site-specific DE may be determined by using the criteria and level of investigations in new § 72.103(f). Section 72.103(f) is a new provision that requires certain new ISFSI or MRS license applicants to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, in determining the DE instead of the current deterministic approach in Appendix A to Part 100.

New § 72.103(a)(2) also provides that if an ISFSI or MRS is located at an NPP site, the existing geological and seismological design criteria for the NPP may be used instead of PSHA techniques or suitable sensitivity analyses because the risk due to a seismic event at an ISFSI or MRS is less than that of an NPP. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used to ensure that the seismic design criteria used is based on the latest seismic hazard information at the site.

New § 72.103(b) provides that applicants for licenses for sites located in either the western U.S. or in the eastern U.S. in areas of known seismic activity, must investigate the geological, seismological, and engineering characteristics of the site using the PSHA techniques or suitable sensitivity analyses of new § 72.103(f). If an ISFSI or MRS is located at an NPP site, the existing geological and seismological design criteria for the NPP may be used instead of PSHA techniques or suitable sensitivity analyses because the risk due to a seismic event at an ISFSI or MRS is less than that of an NPP. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used to ensure that the seismic design criteria used is based on the latest seismic hazard information at the site.

New § 72.103(c) is identical to § 72.102(c). Section 72.103(c) requires that sites, other than bedrock sites, must be evaluated for the liquefaction potential or other soil instability due to vibratory ground motion. This is to ensure that an ISFSI or MRS will be adequately supported on a stable foundation during a seismic event.

New § 72.103(d) is identical to § 72.102(d). Section 72.103(d) requires that site specific investigation and laboratory analysis must show that soil conditions are adequate for the proposed foundation loading. This is to ensure that an ISFSI or MRS will be adequately supported on a stable foundation during a seismic event.

New § 72.103(e) is identical to § 72.102(e). Section 72.103(e) requires that in an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred, and that sites with unstable geologic characteristics should be avoided. This is to ensure that sites with minimum deficiencies are selected and that an ISFSI or MRS will be adequately supported on a stable foundation during a seismic event.

New § 72.103(f) describes the steps required for seismic hazard analysis to determine the DE for use in the design of structures, systems, and components of an ISFSI or MRS. The scope of site investigations to determine the geological, seismological, and engineering characteristics of a site and its environs is similar to § 100.23 requirements. Unlike § 72.102(f), which requires the use of the deterministic method of Appendix A to Part 100, new § 72.103(f) requires evaluating uncertainty in seismic hazard analysis

by using a probabilistic method, such as the PSHA, or suitable sensitivity analyses, similar to § 100.23 requirements for an NPP.

New § 72.103(f)(1) requires that the geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site and to determine the DE. These requirements track existing requirements in § 100.23(c).

New §§ 72.103(f)(2)(i) through (iv) specify criteria for determining the DE for the site, the potential for surface tectonic and nontectonic deformations, the design basis for seismically induced floods and water waves, and other design conditions. In particular, § 72.103(f)(2)(i) provides that a specific-license applicant must address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE. Sections 72.103(f)(2)(ii) through (iv) track the corresponding requirements in § 100.23(d).

Finally, the new § 72.103(f)(3) provides that regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum. This provision is identical to the requirement currently included in § 72.102(f)(2).

Section 72.212 Conditions of general license issued under § 72.210

Section 72.212(b)(2)(i)(B) is revised to require general licensees to address the dynamic loads of the stored casks in addition to the static loads. The requirements are changed because during a seismic event the cask experiences dynamic inertia loads in addition to the static loads, which are supported by the concrete pad. The dynamic loads depend on the interaction of the casks, the pad, and the foundation. Consideration of the dynamic loads, in addition to the static loads, of the stored casks will ensure that the pad would perform satisfactorily during a seismic event.

The new paragraph also requires consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance. Liquefaction of the soil and instability during a vibratory motion due to an earthquake may affect the cask stability, and thus must be addressed.

The changes to § 72.212 are intended to require that general licensees perform appropriate load evaluations of cask storage pads and areas to ensure that casks are not placed in an unanalyzed condition. Similar requirements currently exist in § 72.102(c) for an ISFSI specific license and are now in § 72.103(c).

VIII. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing this final rule to amend 10 CFR Part 72 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

IX. 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 AEA 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 the 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.

X. 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 presenting amendments to its regulations in 10 CFR part 72 for the geological and seismological criteria of a dry cask independent spent fuel storage facility to make them commensurate with the risk of the facility. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

XI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, 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.

The Commission concluded, based on an environmental assessment, that no significant environmental impact would result from this rulemaking. In comparison with an NPP, an operating ISFSI or MRS is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS does not have the variety and complexity of active systems necessary to support an operating NPP. After the spent fuel is in place, an ISFSI or MRS is essentially a static operation and, during normal operations, the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no high temperatures or pressures present during normal operations or under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat generation rate of spent fuel after it has decayed for more than one year before storage in an ISFSI or MRS and the low inventory of volatile radioactive materials readily available for release to the environs. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. The short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel stored at an ISFSI or MRS. Furthermore, even if the short-lived nuclides were present during an event of a fuel assembly rupture, the canister surrounding the fuel assemblies would confine these nuclides.

The standards in part 72 Subparts E ''Siting Evaluation Factors,'' and F ''General Design Criteria,'' ensure that the dry cask storage designs are very rugged and robust. The casks must maintain structural integrity during a variety of postulated non-seismic events, including cask drops, tip-over, and wind driven missile impacts. These non-seismic events challenge cask integrity significantly more than seismic events. Therefore, the casks have substantial design margins to withstand

forces from a seismic event greater than the design earthquake.

Hence, the seismically induced radiological risk associated with an ISFSI or MRS is less than the risk associated with an NPP.

The determination of the environmental assessment is that there will be no significant environmental impact due to the rule changes because the same level of safety would be maintained by the new requirements, taking into account the lesser risk from an ISFSI or MRS. The NRC requested public comments on the environmental assessment for this rule.

XII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). These requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Because the rule will reduce existing information collection requirements, the public burden for these information collections is expected to be decreased by 55 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for further reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *infocollects@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0132), Office of Management and Budget, Washington, DC 20503.

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.

XIII. Regulatory Analysis

The Commission has prepared a Regulatory Analysis (RA) entitled: ''Regulatory Analysis of Geological and Seismological Characteristics for Design of Dry Cask Independent Spent Fuel Storage Installations.'' The RA examines the costs and benefits of the alternatives considered by the Commission. The RA may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov*.

XIV. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects applicants for a Part 72 specific license, and general licensees on or after the effective date of the rule for an ISFSI or MRS. These companies do not generally 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.

XV. Backfit Analysis

The NRC has determined that the backfit rule, 72.62, does not apply to the changes in §§ 72.9, 72.102, and 72.103 because they do not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required for these provisions.

Section 72.212(b)(2)(i)(B) currently requires evaluations of static loads of the stored casks for design of the cask storage pads and areas (foundation). The revision to this section will require general licensees also to address the dynamic loads of the stored casks. During a seismic event, the cask storage pads and areas experience dynamic loads in addition to static loads. The dynamic loads depend on the interaction of the casks, cask storage pads, and areas. Consideration of the dynamic loads of the stored casks, in addition to the static loads, for the design of the cask storage pads and areas will ensure that the cask storage pads and areas will perform satisfactorily in the event of an earthquake.

The revision will also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask specified in the Certificate of Compliance. The soil liquefaction and instability during a vibratory motion due to an earthquake may affect the cask stability.

The changes to § 72.212(b)(2)(i)(B) will impact procedures required to operate an ISFSI and, therefore, implicate the backfit rule. The changes will require that general licensees perform appropriate analyses to assure that the cask seismic design bases bound the specific site seismic conditions, and that casks are not placed in an unanalyzed condition. Therefore, these changes are necessary to assure adequate protection to occupational or public health and safety. Although the Commission is imposing this backfit because it is necessary to assure adequate protection to occupational or public health and safety, the changes to § 72.212 will not actually impose new burden on the general licensees because they currently need to consider dynamic loads to meet the requirements in § 72.212(b)(2)(i)(A). Section 72.212(b)(2)(i)(A) requires general licensees to perform written evaluations to meet conditions set forth in the cask Certificate of Compliance. These Certificates of Compliance require that dynamic loads, such as seismic and tornado loads, be evaluated to meet the cask design bases. Because the general licensees currently evaluate dynamic loads for evaluating the casks, pads and areas, the changes to § 72.212(b)(2)(i)(B) will not actually require any general licensees presently operating an ISFSI to re-perform any written evaluations previously undertaken.

XVI. 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 of OMB.

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, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C 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 § 72.9, paragraph (b) is revised to read as follows:

§ 72.9 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70, through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.103, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.216, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, 72.248.

■ 3. The heading of § 72.102 is revised to read as follows:

§ 72.102 Geological and seismological characteristics for applications before October 16, 2003 and applications for other than dry cask modes of storage.

* * * * *

■ 4. A new § 72.103 is added to read as follows:

§ 72.103 Geological and seismological characteristics for applications for dry cask modes of storage on or after October 16, 2003.

(a)(1) East of the Rocky Mountain Front (east of approximately 104° west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, MO; Charleston, SC; and Attica, NY; sites will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.

(2) For those sites that have been evaluated under paragraph (a)(1) of this section that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized design earthquake ground motion (DE) described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific DE may be determined by using the criteria and level of investigations required by paragraph (f) of this section. For a site with a co-located nuclear power plant (NPP), the existing geological and seismological design criteria for the NPP may be used. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used.

(b) West of the Rocky Mountain Front (west of approximately 104° west longitude), and in other areas of known potential seismic activity east of the Rocky Mountain Front, seismicity must be evaluated by the techniques presented in paragraph (f) of this section. If an ISFSI or MRS is located on an NPP site, the existing geological and seismological design criteria for the NPP may be used. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used.

(c) Sites other than bedrock sites must be evaluated for their liquefaction potential or other soil instability due to vibratory ground motion.

(d) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(e) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(f) Except as provided in paragraphs (a)(2) and (b) of this section, the DE for use in the design of structures, systems, and components must be determined as follows:

(1) *Geological, seismological, and engineering characteristics.* The geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site, to provide sufficient information to support evaluations performed to arrive at estimates of the DE, and to permit adequate engineering solutions to actual or potential geologic and seismic effects at the proposed site. The size of the region to be investigated and the type of data pertinent to the investigations must be determined based on the nature of the region surrounding the proposed site. Data on the vibratory ground motion, tectonic surface deformation, nontectonic deformation, earthquake recurrence rates, fault geometry and slip rates, site foundation material, and seismically induced floods and water waves must be obtained by reviewing pertinent literature and carrying out field investigations. However, each applicant shall investigate all geologic and seismic factors (for example, volcanic activity) that may affect the design and operation of the proposed ISFSI or MRS facility irrespective of whether these factors are explicitly included in this section.

(2) *Geologic and seismic siting factors.* The geologic and seismic siting factors considered for design must include a determination of the DE for the site, the potential for surface tectonic and nontectonic deformations, the design bases for seismically induced floods and water waves, and other design conditions as stated in paragraph (f)(2)(iv) of this section.

(i) Determination of the Design Earthquake Ground Motion (DE). The DE for the site is characterized by both horizontal and vertical free-field ground motion response spectra at the free ground surface. In view of the limited data available on vibratory ground motions for strong earthquakes, it usually will be appropriate that the design response spectra be smoothed spectra. The DE for the site is determined considering the results of the investigations required by paragraph (f)(1) of this section. Uncertainties are inherent in these estimates and must be addressed through an appropriate analysis, such as a probabilistic seismic hazard analysis (PSHA) or suitable sensitivity analyses.

(ii) Determination of the potential for surface tectonic and nontectonic deformations. Sufficient geological, seismological, and geophysical data must be provided to clearly establish if there is a potential for surface deformation.

(iii) Determination of design bases for seismically induced floods and water waves. The size of seismically induced floods and water waves that could affect a site from either locally or distantly generated seismic activity must be determined.

(iv) Determination of siting factors for other design conditions. Siting factors for other design conditions that must be evaluated include soil and rock stability, liquefaction potential, and natural and artificial slope stability. Each applicant shall evaluate all siting factors and potential causes of failure, such as, the physical properties of the materials underlying the site, ground disruption, and the effects of vibratory ground motion that may affect the design and operation of the proposed ISFSI or MRS.

(3) Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

■ 5. In § 72.212, paragraph (b)(2)(i)(B) is revised to read as follows:

§ 72.212 Conditions of general license issued under § 72.210.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) Cask storage pads and areas have been designed to adequately support the static and dynamic loads of the stored casks, considering potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion; and

* * * * *

Dated at Rockville, Maryland, this 10th day of September, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary for the Commission.

[FR Doc. 03–23553 Filed 9–15–03; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI111–1a; FRL–7547–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a revision to the Wisconsin particulate matter (PM) State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) on October 7, 2002. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this document.

DATES: This rule is effective on November 17, 2003, unless EPA receives adverse written comments by October 16, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Christos Panos at (312) 353–8328 before visiting the Region 5 office.

Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B)(1)(i) through (iii)of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328. *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. General Information
II. Review of State Implementation Plan Revision
1. What did Wisconsin submit for approval into the SIP?
2. Why did the State submit this SIP Revision?
3. Why is EPA taking this action?
4. What is the background for this action?
III. What Action is EPA Taking?
IV. Is this Action Final, or May I Submit Comments?
V. Statutory and Executive Order Reviews.

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under ''Region 5 Air Docket WI111''. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide

a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket WI111'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *nash.carlton@epa.gov.* Please include the text ''Public comment on proposed rulemaking Region 5 Air Docket WI111'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD–ROM. You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text ''Public comment on proposed rulemaking Regional Air Docket WI111'' in the subject line on the first page of your comment.

3. By Hand Delivery or Courier. Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Review of State Implementation Plan Revision

1. What Did Wisconsin Submit for Approval Into the SIP?

The October 7, 2002 revision submitted by WDNR requests that EPA approve certain amended provisions to chapter NR 415, Wisconsin Administrative Code (ch. NR 415), repeal sections NR 415.04(5), NR 415.05(5) and NR 415.06(5), and add section NR 415.035 into the Wisconsin PM SIP. Specifically, newly created section NR 415.035 contains a description of the geographic areas where the PM requirements would continue to be in effect. The areas described are identical to the current state total suspended particulates (TSP) nonattainment areas. The amendments to ch. NR 415 replace the term ''nonattainment area'' with a reference to the new section NR 415.035. The repealed sections of ch. NR 415 refer to PM emission limitation compliance schedules whose deadlines have already passed.

2. Why Did the State Submit This SIP Revision?

The revision to the rule changed the applicability of certain PM emission limiting requirements by substituting for the term ''nonattainment area'' a description of the geographic areas where the requirements would continue to be in effect. The revised rule will allow the state to retain the emission limits and RACT requirements which helped lower PM concentrations in those areas and ensure that the PM National Ambient Air Quality Standards (NAAQS) are maintained.

3. Why Is EPA Taking This Action?

EPA is taking this action because the State's request does not change any of the emission limitations currently in the PM SIP. The revision to the Wisconsin PM SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the PM NAAQS and satisfying the applicable PM requirements of the Act.

4. What Is the Background for This Action?

The original PM NAAQS and increments were based on the TSP indicator. On July 1, 1987 (52 FR 24634), EPA replaced TSP as the indicator for the primary and secondary particulate NAAQS with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. EPA replaced the TSP increments with PM increments on June 3, 1994. Area designations for TSP were therefore no longer necessary and serve no useful purpose relative to Federal programs. EPA deleted all TSP area designations in the State of Wisconsin on September 13, 1995 (60 FR 47485).

Wisconsin, however, chose to retain the 24-hour TSP standard and TSP designations at the state level. This was done so that the emission limits and reasonably available control technology (RACT) requirements in the SIP remained in effect, even after EPA abolished the TSP standard and deleted all of Wisconsin's TSP designations. The current federally approved PM SIP, in ch. NR 415, includes rules which specifically apply emission limits and RACT requirements to any areas designated as TSP nonattainment.

III. What Action Is EPA Taking?

In this action, EPA is approving revisions to chapter NR 415, Wisconsin Administrative Code into the Wisconsin PM SIP. The state submitted this SIP revision on October 7, 2002. The changes to the rule will allow Wisconsin to redesignate certain State-designated TSP nonattainment areas to attainment while retaining the PM limits and control requirements which helped lower PM concentrations in those areas. As described above, this submittal provides for attainment and maintenance of the PM NAAQS and is therefore fully approvable.

IV. Is This Action Final, or May I Submit Comments?

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision. Should EPA receive adverse written comments by October 16, 2003, we will withdraw this direct final and respond to any comments in a final action. If EPA does not receive adverse comments, this action will be effective without further notice. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on November 17, 2003.

V. Statutory and Executive Order Reviews.

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 25, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(109) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(109) On October 7, 2002, the Wisconsin Department of Natural Resources submitted a State Implementation Plan (SIP) revision for the control of emissions of particulate matter (PM) in the state of Wisconsin. This revision will allow certain state designated nonattainment areas for total suspended particulates (TSP) to be redesignated to attainment while retaining the emission limits and control requirements which helped lower PM concentrations in those areas. Specifically, EPA is approving into the PM SIP certain provisions to chapter NR 415, Wisconsin Administrative Code, and repealing sections NR 415.04(5), NR 415.05(5) and NR 415.06(5).

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference.

(A) NR 415.035 as created and published in the (Wisconsin) Register, October 2001, No. 550, effective November 1, 2001.

(B) NR 415.04(2)(intro.), NR 415.04(3)(intro.), NR 415.04(3)(a), NR 415.04(4)(intro.), NR 415.04(4)(b), NR 415.05(3)(intro.), NR 415.06(3)(intro.), NR 415.06(4), and NR 415.075(3)(intro.) as amended and published in the (Wisconsin) Register, October 2001, No. 550, effective November 1, 2001.

[FR Doc. 03–23426 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ56–250w, FRL–7559–3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of an adverse comment, EPA is withdrawing the direct final rule which approved revisions to the New Jersey State Implementation Plan for ozone. The direct final rule was published on August 11, 2003 (68 FR 47477), approving eight (8) source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_X). As stated in the direct final rule, if adverse comments were received by September 10, 2003, a timely withdrawal would be published in the **Federal Register**. EPA subsequently received an adverse comment. EPA will address the comments in a subsequent final action based upon the proposed action also published on August 11, 2003 (68 FR 47532). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 68 FR 47477 is withdrawn on September 16, 2003.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892 or at *Gardella.Anthony@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 4, 2003

Jane M. Kenny,

Regional Administrator, Region 2.

PART 52—[AMENDED]

■ Accordingly, the addition at 40 CFR 52.1570(c)(73) is withdrawn as of September 16, 2003.

[FR Doc. 03–23579 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC 105–200331a; FRL–7559–5]

Approval and Promulgation of Implementation Plans, North Carolina: Approval of Miscellaneous Revisions to Regulations Within the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Forsyth County Environmental Affairs Department Local Implementation Plan (LIP), submitted to EPA through the North Carolina Department of Environment and Natural Resources. These revisions to the Forsyth County LIP submitted March 28, 2003, include: amending or adding regulations relating to indirect heat exchangers, cotton ginning operations, bulk gasoline terminals, gasoline truck tanks and vapor collection systems and activities exempt from permit requirements and other miscellaneous rules within, the Air Pollution Control Requirements subchapter. The purpose of these revisions is to make the revised regulations consistent with the requirements of the Clean Air Act.

DATES: This direct final rule is effective November 17, 2003 without further notice, unless EPA receives adverse comment by October 16, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street,

SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections I.B.1.i. through iii. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Ms. De La Torre Colón can also be reached via electronic mail at *delatorre.rosymar@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under NC 105. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. North Carolina Department of Environment and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604. Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina 27101.

3. Electronic Access. You may access this **Federal Register** document electronically through the *Regulation.gov* Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking NC 105 in the subject line on the first page of your comment.'' Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *delatorre.rosymar@epa.gov,* please including the text ''Public comment on proposed rulemaking NC 105 in the subject line.'' EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov,* EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to *Regulations.gov* at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking NC 105 in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Rosymar De La Torre Colón; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are

Monday through Friday, 9 to 3:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On March 28, 2003, the Forsyth County Environmental Affairs Department, through the North Carolina Department of Environment and Natural Resources, submitted revisions to the Forsyth county LIP. These revisions include the amending of regulations relating to ozone, indirect heat exchangers, cotton ginning operations, bulk gasoline terminals, gasoline truck tanks and vapor collection systems and activities exempt from permit requirements and other miscellaneous rules within, the Forsyth County LIP. A detailed analysis of each of the major revisions submitted is listed below.

III. Analysis of Forsyth County's Submittal

Subchapter 3D—Air Pollution Control Requirements

Section .0500 Emission Control Standards

.0504 Particulates From Wood Burning Indirect Heat Exchangers

This rule was recodified to reference a new paragraph (f).

.0542 Control of Particulate Emissions From Cotton Ginning Operations

Added language that allows for establishing control requirements for particulate emissions operations. This applies to all new, existing and modified facilities. Monitoring is required to insure all operating devices are functioning properly. Alternate control measures were established along with recordkeeping guidelines.

Section .0900 Volatile Organic Compounds

.0927 Bulk Gasoline Terminals

This rule was revised to add paragraph (m) stating: The owner or operator of a bulk gasoline terminal shall have on file a copy of the certification test conducted according to Rule .0932 of this Section for each gasoline tank truck loaded at the terminal.

.0932 Gasoline Trucks, Tanks and Vapor Collection Systems

This rule was added to detail recordkeeping processes for certification test conducted and defining bulk gasoline terminals.

Subchapter 3Q

Section .0100 General Provisions

.0102 Activities Exempted From Permit Requirements

This rule was amended to provide a list of specific activities that are exempt from permit requirements including generators and self-propelled vehicles.

IV. Final Action

EPA is approving the aforementioned changes to the SIP.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 17, 2003 without further notice unless the Agency receives adverse comments by October 16, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 17, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: August 28, 2003.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart II—North Carolina

■ 2. Section 52.1770(c) Table 2 is amended:

■ a. Under Subchapter 3D by revising entries for ''.0504'', ''.0927'' and ''.0932''.

■ b. Under Subchapter 3D by adding in numerical order a new entry for ''.0542''.

■ c. Under Subchapter 3Q by revising entry for ''.0102''.

The revisions and addition read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

TABLE 2.—EPA APPROVED FORSYTH COUNTY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Subchapter 3D Air Pollution Control Requirement				
*	*	*	*	*
Section .0500 Emission Control Standards				
*	*	*	*	*
Section .0504	Particulates from Wood Burning Indirect Indirect Heat Exchangers.	7/22/02	9/16/03 [Insert FR page citation of publication].	Repealed.
*	*	*	*	*
Sect .0542	Control of Particulate Emissions from Cotton Ginning Operations.	7/22/02	9/16/03 [Insert FR page citation of publication].	Repealed.

TABLE 2.—EPA APPROVED FORSYTH COUNTY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
	Section .0900 Volatile Organic Compounds			
*	*	*	*	*
Sect .0927	Bulk Gasoline Terminals	7/22/02	9/16/03 [Insert FR page citation of publication].	
*	*	*	*	*
Sect .0932	Gasoline Truck Tanks and Vapor Collection Systems.	7/22/02	9/16/03 [Insert FR page citation of publication].	
*	*	*	*	*
	Subchapter 3Q Air Quality Permits			
	Section .0100 General Provisions			
*	*	*	*	*
Sect .0102	Activities Exempted From Permit Requirements.	7/22/02	9/16/03 [Insert FR page citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 03–23582 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–271–0412a; FRL–7551–8]

Revisions to the California State Implementation Plan, Monterey Bay Unified and San Joaquin Valley Unified Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compounds (VOC) emissions from organic solvents, animal reduction, leather processing, and industries coating glass products. We are approving and rescinding local rules that regulate these emissions sources under authority of the Clean Air Act as amended in 1990 (CAA or the Act)).

DATES: This rule is effective on November 17, 2003 without further notice, unless EPA receives adverse comments by October 16, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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

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

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

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

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

Local agency	Rule number	Rule title	Adopted	Submitted
Monterey	414	Reduction of Animal Matter	08/21/02	10/16/02
Monterey	430	Leather Processing Operations (rescission)	08/21/02	10/16/02
San Joaquin	4610	Glass Coating Operations	12/19/02	04/01/03
San Joaquin	4661	Organic Solvents	05/16/02	08/06/02

On December 3, 2002 (MBUAPCD), August 30, 2002 (SJVUAPCD Rule 4661) and May 13, 2003 (SJVUAPCD Rule 4610), these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

MBUAPCD adopted a version of Rule 414 on December 13, 1984 and Rule 430 on January 15, 1997, which EPA approved into the SIP on July 13, 1987 (52 FR 26148) and February 9, 1999 (64 FR 6226), respectively. SJVUAPCD Rule 4610 is a new rule. EPA has not reviewed and approved into the SIP any prior version of the rule. SJVUAPCD adopted a version of Rule 4661 on December 20, 2001, which EPA approved into the SIP on July 22, 2002 (67 FR 47701).

C. What Is the Purpose of the Submitted Rule Revisions?

MBUAPCD Rule 414 has been revised by reformatting the rule to be consistent with the District's standard format.

MBUAPCD Rule 430 is being rescinded because there are no longer any affected sources.

SJVUAPCD Rule 4610 is a new rule and is designed to decrease VOC emissions from industries coating glass products with VOC containing materials. The rule contains general VOC emission limits and speciality coating VOC emission limits for mirror backing, optical, electric dissipating, and metallic coatings. Also, the rule contains requirements for solvent cleaning, storage and disposal, application equipment, and emission control equipment.

SJVUAPCD Rule 4661 has been revised to exempt sources applicable to Rule 4610 from the requirements of Rule 4661.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rules 4610 and 4661 must fulfill RACT.

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

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules and rule rescission because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules and rule recission. If we receive adverse comments by October 16, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 17, 2003. This will incorporate these rules and rescission into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

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

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). *See* section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 5, 2003.

Debbie Jordan,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(245)(i)(C)(*2*), (302)(i)(B)(*3*), (303)(i)(C)(*2*), and (315)(i)(B)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(245) * * *

(i) * * *

(C) * * *

(*2*) Previously approved on February 9, 1999 in (245)(i)(C)(*l*) and now deleted without replacement Rule 430.

* * * * *

(302) * * *

(i) * * *

(B) * * *

(*3*) Rule 414, adopted on August 21, 2002.

* * * * *

(303) * * *

(i) * * *

(C) * * *

(*2*) Rule 4661, adopted on May 16, 2002.

* * * * *

(315) * * *

(i) * * *

(B) * * *

(*2*) Rule 4610, adopted on December 19, 2002.

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[FR Doc. 03–23588 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 183–1183a; FRL–7559–8]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Iowa Operating Permits Program for air pollution control. This action approves numerous rule revisions adopted by the state since the initial approval of its program in 1995. Rule revisions approved in this action pertain to the deadlines for which an application for a significant modification is due, and Title V insignificant activities and insignificant emission levels.

EPA approval of these revisions will ensure consistency between the state and Federally-approved rules.

DATES: This direct final rule is effective November 17, 2003, without further notice, unless EPA receives adverse comment by October 16, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Judith Robinson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *robinson.judith@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of the state submittals are available for public inspection during normal business hours at the above-listed Region 7 location. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Judith Robinson at (913) 551–7825, or by e-mail at *robinson.judith@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the part 70 operating permits program?

What is the Federal approval process for an operating permits program?

What does Federal approval of a state operating permits program mean to me?

What is being addressed in this document?

Have the requirements for approval of a revision to the operating permits program been met?

What action is EPA taking?

What Is the Part 70 Operating Permits Program?

The Clean Air Act Amendments (CAA) of 1990 require all states to develop an operating permits program that meets certain Federal criteria listed in 40 Code of Federal Regulations (CFR) part 70. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include ''major'' sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled ''Approval Status of State and Local Operating Permits Programs.''

What Does Federal Approval of a State Operating Permits Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved operating permits program is primarily a state responsibility. However, we are also authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

We have requested that each permitting authority periodically submit any revised part 70 rules to us for approval as a revision to their approved part 70 program. The purpose for this process is to ensure that the state program is consistent with Federal requirements.

Consequently, the state of Iowa has requested that we approve a number of revisions to its part 70 rules. In letters dated March 11, 2002, and July 17, 2002, the state requested that we approve various revisions to rules 567–22.105, 567–22.113, 567–22.100, and 567–22.103.

The rules were amended to accomplish a number of changes. Some amendments were primarily minor changes in wording to rules which were already in the approved program. In some instances clarifications and corrections were made. A complete listing of each rule change is contained in the technical support document which is a part of the docket for this action and which is available from the EPA contact above. A few of the rule revisions which may be of interest, however, are discussed here.

Rule 22.100: Definition of ''manually operated equipment'': Language was added so that manually operated equipment was defined.

Rule 22.103(1): This rule lists insignificant activities excluded from Title V operating permit applications. A new introductory paragraph was added for clarification, which did not result in substantive changes. Several additional activities were added. A few of the new categories are: photographic process equipment; cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source; housekeeping activities for cleaning purposes; and administrative activities including paper shredding, copying, photographic activities, and blueprinting machines.

Rule 22.103(2): This rule lists insignificant activities which must be included in Title V operating permit applications based on emission rates and capacity of the source or unit. The potential emissions and storage tank definitions were revised. The following is an insignificant activity which was added: internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft.

Rule 22.105: This rule revises the deadline for application submittal to no later than 3 months after commencing operation of the changed source, if the change is not prohibited by the current permit.

Rule 22.113: A new subrule was added to make clear when the application for a significant modification is due, consistent with the change to Rule 22.105.

Have the Requirements for Approval of a Revision to the Operating Permits Program Been Met?

Our review of the material submitted indicates that the state has amended rules for the Title V program in accordance with the requirements of section 502 of the CAA and the Federal rule, 40 CFR part 70, and has met the requirement for a program revision as established in 40 CFR 70.4(i).

What Action Is EPA Taking?

We are approving revisions to the Iowa part 70 operating permits program which were submitted to EPA on March 11, 2002, and July 17, 2002. We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number (IA 183–1183a) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be

marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. Electronic mail. Comments may be sent by e-mail to *robinson.judith@epa.gov*. Please include identification number (IA 183–1183a) in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. By Mail. Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

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

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

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs provided that they meet the requirements of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permits program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of a state program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 4, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for Part 70 continues to read as follows:

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

■ 2. Appendix A to Part 70 is amended by adding under ''Iowa'' paragraph (f) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Iowa

* * * * *

(f) The Iowa Department of Natural Resources submitted for program approval rules 567–22.100, 567–22.103 on July 17, 2002, and rules 567–22.105, 567–22.113, on March 11, 2002. These revisions to the Iowa program are approved effective November 17, 2003.

* * * * *

[FR Doc. 03–23584 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 20

[WT Docket No. 01–309; FCC 03–168]

Hearing Aid-Compatible Telephones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission modifies the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (HAC Act) to require that digital wireless phones be capable of being effectively used with hearing aids. It finds that modifying the exemption will extend the benefits of wireless telecommunications to individuals with hearing disabilities—including emergency, business, and social communications—thereby increasing the value of the wireless network for all Americans.

DATES: Effective November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mindy Littell, Policy Division, Wireless Telecommunications Bureau, at (202) 418–0789 or Gregory Guice, Policy Division, Wireless Telecommunications Bureau, at (202) 418–0095.

SUPPLEMENTARY INFORMATION: This is a summary of the *Report and Order,* adopted on July 10, 2003, and released on August 14, 2003. The full text of the *Report and Order* is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. 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.*

Overview

1. In the *Report and Order,* the Commission modifies the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (HAC Act) to require that digital wireless phones be capable of being effectively used with hearing aids. It finds that modifying the exemption will extend the benefits of wireless telecommunications to individuals with hearing disabilities—including emergency, business, and social communications—thereby increasing the value of the wireless network for all Americans.

2. The Commission takes these actions to facilitate the Congressional goal of ensuring access to telecommunications services for individuals with hearing disabilities. In light of the rising number of calls to emergency services placed by wireless phone users, preserving access to wireless telecommunications for individuals with hearing disabilities is critical. In addition to the public safety benefits, these actions will also extend to individuals with hearing disabilities the social, professional, and convenience benefits offered by wireless telecommunications as well. In light of our society's increased reliance on wireless phones and the growing trend among wireless carriers to move away from analog services in favor of more efficient, feature-rich digital services, these steps will ensure that individuals with hearing disabilities continue to enjoy access to wireless telecommunications devices and services.

Final Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the § 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones Notice of Proposed Rulemaking (NPRM), 66 FR 58703 (November 23, 2001). The Commission sought written public comment on the proposal in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, Adopted Rules

4. In the *Report and Order,* the Commission modifies the exemption for wireless phones under the Hearing Aid Compatibility Act of 1988 (''HAC Act'') to require digital wireless phones to provide for effective use with hearing aids. We find that modifying the exemption in the manner described in the *Report and Order* will extend the benefits of wireless telecommunication to persons with hearing disabilities, thereby increasing the value of the wireless network for all Americans. The Commission took the following actions:

i. Adopts certain performance levels set forth in a technical standard established by the American National Standards Institute (ANSI) as the applicable technical standard for compatibility of digital wireless phones with hearing aids;

ii. requires certain digital wireless phone models to provide reduced radio frequency (RF) interference (*i.e.*, meet a ''U3'' rating under the ANSI standard), and requires certain digital wireless phone models to provide telecoil coupling capability (*i.e.* meet a ''U3T'' rating under the ANSI standard);

iii. requires, within two years, each digital wireless phone manufacturer to make available to carriers and require each carrier providing digital wireless services to make available to consumers at least two handset models for each air interface it offers which provide reduced RF emissions (''U3'' rating);

iv. requires each Tier I wireless carrier providing digital wireless services to make available to consumers within two years at least two handset models for each air interface it offers to provide reduced RF emissions (''U3'' rating) or 25 percent of the total number of phone models it offers, whichever is greater;

v. requires, within three years, each digital wireless phone manufacturer to make available to carriers and require each carrier providing digital wireless services to make available to consumers at least two handset models for each air interface it offers which provide telecoil coupling (''U3T'' rating);

vi. adopts a *de minimis* exception for certain digital wireless phone manufacturers and carriers;

vii. encourages digital wireless phone manufacturers and service providers to offer at least one compliant handset that is a lower-priced model and one that has higher-end features;

viii. requires 50 percent of all digital wireless phone models offered by a manufacturer or carrier to be compliant with the reduced RF emissions requirements by February 18, 2008;

ix. requires wireless carriers and digital wireless handset manufacturers to report semiannually (every six months) on efforts toward compliance during the first three years, then annually thereafter through the fifth year of implementation;

x. requires manufacturers to label packages containing compliant handsets and to make information available in the package or product manual, and require service providers to make available to consumers the performance ratings of compliant phones;

xi. commits the Commission staff to deliver a report to the Commission shortly after three years from the effective date of this Order to examine the impact of these requirements, and which will form the basis for the Commission to initiate a proceeding soon after the report is issued to evaluate whether to increase or decrease the 2008 requirement to make 50 percent of phone models with

reduced RF emissions, whether to adopt implementation benchmarks beyond 2008, and whether to otherwise modify the implementation requirements;

xii. encourages hearing aid manufacturers to label their pre-customization products according to the ANSI standard; and

xiii. denies the petition of Myers Johnson, Inc., for revision of § 24.232 as it relates to directional wireless phone antennas.

5. The Commission takes these actions to ensure that that the Congressional goal of ensuring access to telecommunications services for persons with hearing disabilities is met. In addition, in light of our society's increased reliance on wireless phones and the growing trend among wireless carriers to move away from analog services in favor of more efficient, feature-rich digital services, these steps will ensure that people with hearing disabilities continue to enjoy access to wireless telecommunications devices and services.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. We received no comments directly in response to the IRFA in this proceeding. The Commission, however, considered the potential impact of its rules on smaller handset manufacturers and service providers. To ensure that the rules have a minimal impact on these entities, the Commission, in recognition of the adverse effect its HAC compatibility percentage requirements could have, modified the requirement for manufacturers and service providers. Therefore, the requirement that manufacturers and service providers must make 50 percent of their handsets compliant with the reduced RF emissions level (''U3'') was modified to provide that, by February 18, 2008, 50 percent of all phones offered by the entity in the U.S. market must be compliant, or two phones per air interface offered, whichever number of handsets is greater.

C. Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. Under the Small business Act, a ''small business concern'' is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

8. Cellular and Other Wireless Telecommunications or Paging. The SBA has developed a size standard for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,761 companies reported that they were engaged in the provision of wireless service. Of these 1,761 companies, an estimated 1,175 have 1,500 or fewer employees and 586 have more than 1,500 employees. Consequently, we estimate that a majority of small wireless service providers may be affected by the rules.

9. Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. The Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The reporting, recordkeeping, or other compliance requirements adopted require that any and all of the affected entities to which the Commission's adopted rules apply must comply with the Commission's hearing aid compatibility rules adopted in the *Report and Order*. The Commission has detailed the timeframes for compliance and was mindful of the needs of manufacturers and service providers. The timeframes, therefore, reflect the Commission's balancing of the competing interests. We ensure that access to wireless phones for persons with hearing disabilities is maintained, and also to ensure that manufacturers and service providers are afforded a reasonable amount of time within which to comply with our rules.

11. In the *Report and Order*, the Commission requires wireless carriers and handset manufacturers to report every six months on efforts toward compliance with the requirements of the *Report and Order* during the first three years, then annually thereafter through the fifth year of implementation. These reports will serve dual purposes: They will assist us in monitoring the progress of implementation, and they will provide valuable information to the public concerning compatible handsets. The reporting requirement will extend through the end of the fifth year following the effective date of the *Report and Order* to assist in verifying compliance with the requirement to make at least 50 percent of all phone models offered compatible by February 18, 2008. Digital wireless phone manufacturers and service providers may submit joint reports, if they wish, in order to minimize the reporting burden. The reports should describe manufacturer and carrier efforts aimed at complying with the requirements of the *Report and Order*. Specifically, the reports should include (i) digital wireless phones tested; (ii) laboratory used; (iii) test results for each phone tested; (iv) identification of compliant phone models and ratings according to ANSI C63.19; (v) report on the status of product labeling; (vi) report on outreach efforts; (vii) information related to retail availability of compliant phones; (viii) information related to incorporating hearing aid compatibility features into newer models of digital wireless phones; (ix) any activities related to ANSI C63.19 or other standards work intended to promote compliance with the *Report and Order*; (x) total numbers of compliant and non-compliant phone models offered as of the time of the report; and (xi) any ongoing efforts for interoperability testing with hearing aid devices.

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

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its adopted

approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

13. The critical nature of hearing aid compatibility with wireless phones limits the Commission's ability to provide small manufacturers of wireless handsets and wireless service providers with a substantially less burdensome set of regulations than that placed on large entities. In the *Report and Order*, the Commission concludes that continuing the exemption afforded wireless phones under the HAC Act would have an adverse effect on individuals with hearing disabilities. Consumers who use hearing aids or cochlear implants indicate they have had difficulty finding either wireless phones they can use without suffering from annoying and sometimes painful interference, or without resorting to expensive and cumbersome external attachments. Consumers state that it is becoming very difficult to find analog wireless phones and services, and they are unable to use most digital wireless phones because of the resulting interference. By not being able to take advantage of most newer, digital wireless phones and services, hearing aid users assert they cannot take advantage of the attractive pricing and service plans available to other consumers, many of which include free or reduced-price phones, because the phones offered do not work with their hearing aids. Some consumers point out that their lack of ability to use a digital wireless phone causes them problems in their employment, particularly since many employers now rely on digital phones and services to stay in contact with employees in the field. A few consumers reported difficulty in finding a phone that works with their hearing aids because they were unable to test the phone before purchasing it. Some consumers expressed a desire to use a wireless phone for emergency use while away from home. However, because they are unable to find one they can use, they are forced to accept greater risks than non-hearing aid users since they are unable to call 911 even if they have access to a digital wireless phone.

14. In the *Report and Order*, however, the Commission recognizes that certain manufacturers and service providers may have only a small presence in the market. For those manufacturers and service providers, the Commission adopted a *de minimis* exception. Specifically, if a manufacturer or carrier offers two or fewer digital wireless handset models in the U.S., it is exempt from the compatibility requirements in this *Report and Order*. If a manufacturer or carrier offers three digital wireless handset models, it must make at least one compliant phone model available in two years. Furthermore, to the extent there are digital wireless providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the rules. Similarly, if a service provider obtains handsets only from manufacturers that offer three digital wireless phone models in the U.S., that service provider would only have to offer one compliant handset model.

15. In addition, in considering the possible impact of our rules on the many small business owners that act as agents for service providers, the Commission crafted its labeling rules to allow these entities flexibility in how they convey the information persons with hearing disabilities will need to make an informed purchase.

F. Report to Congress

16. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

G. Effective Date of Adopted Rules

17. Pursuant to 5 U.S.C. 553(d), the rules adopted herein shall become effective November 17, 2003.

Ordering Clauses

18. Pursuant to the authority of sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 308, 309(j), 310, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310, and 610, the rule changes are amended as set forth below and shall become effective November 17, 2003.

List of Subjects in 47 CFR Parts 2 and 20

Communications common carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 2 and 20 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Amend § 2.1033 by adding paragraph (d) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(d) Applications for certification of equipment operating under part 20, that a manufacturer is seeking to certify as hearing aid compatible, as set forth in § 20.19 of that part, shall include a statement indicating compliance with the test requirements of § 20.19 and indicating the appropriate U-rating for the equipment. The manufacturer of the equipment shall be responsible for maintaining the test results.

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 3. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

■ 4. Amend part 20 by adding § 20.19 to read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

(a) *Scope of section.* This section is applicable to providers of Broadband Personal Communications Services (part 24, subpart E of this chapter), Cellular Radio Telephone Service (part 22, subpart H of this chapter), and Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands (included in part 90, subpart S of this chapter) if such providers offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. This section also applies to the manufacturers of the wireless phones used in delivery of these services.

(b) *Technical standard for hearing aid compatibility.* A wireless phone used for

public mobile radio services is hearing aid compatible for the purposes of this section if it meets, at a minimum:

(1) For radio frequency interference: U3 as set forth in the standard document ANSI C63.19–2001 ''American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19–2001'' (published October 8, 2001—available for purchase from the American National Standards Institute); and

(2) For inductive coupling: U3T rating as set forth in the standard document ANSI C63.19–2001 ''American National Standard for Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids, ANSI C63.19–2001'' (published October 8, 2001—available for purchase from the American National Standards Institute).

(3) Manufacturers must certify compliance with the test requirements and indicate the appropriate U-rating for the wireless phone as set forth in § 2.1033(d) of this chapter.

(c) *Phase-in for public mobile service handsets concerning radio frequency interference.*

(1) Each manufacturer of handsets used with public mobile services for use in the United States or imported for use in the United States must:

(i) Offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(1) by September 16, 2005; and

(ii) Ensure at least 50 percent of their handset offerings for each air interface offered comply with § 20.19(b)(1) by February 18, 2008.

(2) And each provider of public mobile service must:

(i) Include in their handset offerings at least two handset models per air interface that comply with § 20.19(b)(1) by September 16, 2005 and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store; and

(ii) Ensure that at least 50 percent of their handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless handset models the carrier offers nationwide.

(3) Each Tier I carrier must:

(i) Include in their handset offerings at least two handset models or 25 percent of the total number of unique digital wireless handset models offered by the carrier nationwide (calculated based on the total number of unique digital wireless handset models the carrier offers nationwide), whichever is greater, for each air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the carrier all of these handset models for consumers to test in the store; and

(ii) Ensure that at least 50 percent of their handset models for each air interface comply with § 20.19(b)(1) by February 18, 2008, calculated based on the total number of unique digital wireless phone models the carrier offers nationwide.

(d) *Phase-in for public mobile service handsets concerning inductive coupling.*

(1) Each manufacturer of handsets used with public mobile services for use in the United Sates or imported for use in the United States must offer to service providers at least two handset models for each air interface offered that comply with § 20.19(b)(2) by September 18, 2006.

(2) And each provider of public mobile service must include in their handset offerings at least two handset models for each air interface that comply with § 20.19(b)(2) by September 18, 2006 and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store.

(e) *De minimis exception.*

(1) Manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of this section. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless phone models in the U.S., the service provider would likewise be exempt from the requirements of this section.

(2) Manufacturers or mobile service providers that offer three digital wireless handset models, must make at least one compliant phone model in two years. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless phone models in the U.S. would be required to offer at least one compliant handset model.

(f) *Labeling requirements.* Handsets used with public mobile services that are hearing aid compatible, as defined in § 20.19(b) of this chapter, shall clearly display the U-rating, as defined in 20.19(b)(1), (2) on the packaging material of the handset. An explanation of the ANSI C63.19–2001 U-rating system shall also be included in the owner's manual or as an insert in the packaging material for the handset.

(g) *Enforcement.* Enforcement of this section is hereby delegated to those states which adopt this section and provide for enforcement. The procedures followed by a state to enforce this section shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted or incorporated this section, or failed to act within 6 months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints. A written notification to the complainant that the state believes action is unwarranted is not a failure to act. The procedures set forth in part 68, subpart E of this chapter are to be followed.

[FR Doc. 03–23527 Filed 9–15–03; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 68, No. 179
Tuesday, September 16, 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 HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–116]

RIN 1625–AA00

Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a permanent security zone on the waters adjacent to the Three Mile Island Generating Station. This would protect the safety and security of the plant from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action would close water areas around the plant.

DATES: Comments and related material must reach the Coast Guard on or before November 17, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147. The Marine Safety Office Philadelphia Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above mentioned office between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–116), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Marine Safety Office Philadelphia, Waterways Management Branch 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

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' ability and desire to utilize multiple means in different geographic areas to increase their opportunities to successfully carry out their mission, thereby maximizing destruction using multiple terrorist acts.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* (67 FR 58317, September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–01 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard as lead federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. A security zone is a tool available to the Coast Guard that may be used to limit vessel traffic in a specific area to help protect waterfront facilities from damage, injury, or terrorist attack.

On June 4, 2003, we published a temporary final rule entitled, ''Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, PA,'' in the **Federal Register** (68 FR 33399). The temporary final rule designates the waters of the Susquehanna River in the vicinity of the Three Mile Island Generating Station a security zone. No person or vessel may enter or navigate within this security zone without the permission of the Coast Guard. We propose to make the security zone in this area permanent.

Discussion of Proposed Rule

This NPRM proposes to place a permanent security zone around critical infrastructure at the Three Mile Island Generating Station on the Susquehanna River, Dauphin County, Pennsylvania. No person or vessel would be able to enter or remain in the prescribed security zone without the permission of the Captain of the Port, Philadelphia, PA or designated representative. Federal, state, and local agencies would assist the Coast Guard in the enforcement of this proposed rule.

Regulatory Evaluation

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

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: Owners or operators of fishing vessels and recreational vessels intending to transit portions of the Susquehanna River.

This security zone would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions affect only a limited area and vessel traffic could pass safely around the security zone. Additionally, the opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone would not be disrupted.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Kevin Sligh or Lieutenant Junior Grade Toussaint Alston, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This 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 Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of

a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.554 to read as follows:

§ 165.554 Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Three Mile Island Generating Station bounded by a line beginning at 40°09′14.74″ N, 076°43′40.77″ W; thence to 40°09′14.74″ N, 076°43′42.22″ W; thence to 40°09′16.67″ N, 076°43′42.22″ W; thence to 40°09′16.67″ N, 076° 43′ 40.77″ W; thence back to the beginning point at 40°09′14.74″ N, 076°43′40.77″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

Dated: August 7, 2003.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 03–23600 Filed 9–15–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI111–1b; FRL–7547–4]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a revision to the Wisconsin particulate matter (PM) State Implementation Plan (SIP). The SIP revision was submitted by the Wisconsin Department of Natural Resources (WDNR) on October 7, 2002, and is approvable because it satisfies the requirements of the Clean Air Act. Specifically, EPA is proposing to approve revisions to chapter NR 415, Wisconsin Administrative Code into the Wisconsin PM SIP. The changes to the rule will allow certain state designated nonattainment areas for total suspended particulates (TSP) to retain the PM limits and control requirements which helped lower PM concentrations in those areas. In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule, we plan to take no further action on this proposed rule. If we receive significant adverse comments, in writing, which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on or before October 16, 2003.

ADDRESSES: Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Christos Panos at (312) 353–8328 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328. *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under ''Region 5 Air Docket WI111''. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago,

Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket WI111'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *nash.carlton@epa.gov.* Please include the text ''Public comment on proposed rulemaking Region 5 Air Docket WI111'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE'' and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text ''Public comment on proposed rulemaking Regional Air Docket WI111'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your

response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: July 25, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–23427 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 259–0414; FRL–7558–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO_X) emissions at truck stops. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 16, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov.*

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

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

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

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117, *fong.yvonnew@epa.gov.*

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

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B. Are there other versions of this rule?
C. What is the purpose of the submitted rule?
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A. How is EPA evaluating the rule?
B. Does the rule meet the evaluation criteria?
C. Public comment and final action.
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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	1634	Pilot Credit Generation Program for Truck Stops	11/09/01	01/22/02

On February 27, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There are no previous versions of Rule 1634 in the SIP and the SCAQMD has not adopted any earlier versions of this rule.

C. What Is the Purpose of the Submitted Rule?

The submitted rule will allow mobile source emission reduction credits (MSERCs) to be generated from the use of electric power in lieu of diesel-powered engines for trailer refrigeration units operating in standby mode, for on-board electrical systems, or for heating, ventilating, and air conditioning of truck cabs at truck stops. The MSERCs can be used by stationary sources in the SCAQMD's Regional Clean Air Incentive Market (RECLAIM) program to meet declining emission limits. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we used to define specific evaluation criteria include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''Improving Air Quality with Economic Incentive Programs,'' January 2001, Office of Air and Radiation, EPA–452/R–01–001. This guidance document applies to discretionary economic incentive programs (EIPs) and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether approvability issues arise.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations and EIPs.

The TSD has more information on our evaluation.

C. Public Comment and Final Action

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

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 3, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–23593 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN144–3; FRL–7559–1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to particulate matter (PM) control requirements for certain Indiana natural gas combustion sources subject to 326 Indiana Administrative Code (IAC) 6–1, Indiana's PM regulations. EPA is also proposing to approve various cleanup revisions to this rule.

The revision primarily concerns PM limits for combustion sources that burn natural gas and are located in certain Indiana counties. Other revisions to the rule are minor rewording changes, the updating of source and facility names, and the elimination of references to sources that have shut down. EPA is proposing to approve the requested revisions.

DATES: The EPA must receive written comments by October 16, 2003.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B) of the **SUPPLEMENTARY INFORMATION** section.

You may inspect copies of Indiana's submittal at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524, e-mail: *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

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I. General Information
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  B. Cleanup revisions
IV. What is the EPA's analysis of the requested revisions?
V. What are the environmental effects of these actions?
VI. Public comments
VII. Summary of EPA action
VIII. Statutory and Executive Order Reviews

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under ''Region 5 Air Docket IN144.''

The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

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B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket IN144'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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D. What Should I Consider as I Prepare My Comments for EPA?

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

Indiana submitted a State Implementation Plan (SIP) request to EPA on December 19, 2001. This request sought approval of provisions for certain natural gas combustion sources, cleanup provisions, and other changes to 326 IAC 6–1. EPA published a proposed and a direct final rule to approve the requested revisions in the **Federal Register** on October 11, 2002 (67 FR 63268–70, 63353). EPA received an adverse comment on the rule from Ispat Inland, Inc. concerning the inclusion of 326 IAC 6–1–10.1(l) through (v), Continuous Compliance Plan requirements for Lake County, Indiana. As a result of this adverse comment, EPA published a withdrawal of the direct final rule in the November 27, 2002 **Federal Register** (67 FR 70850).

On January 19, 2002, Indiana revised 326 IAC 6–1, to delete subsection 1(b), which concerned the relationship between the limitations in that rule and emission limitations established in certain State operating permits. This action also included realphabetizing sections 1(c) and 1(d) to 1(b) and 1(c) respectively. Subsection 1(b) was deleted for consistency purposes based on changes made to the part 70 program, as described in the Indiana Part 70 Submittal dated March 20, 2002. The revision made to the rule by deleting the original 326 IAC 6–1–1(b) will not be evaluated in this rulemaking action. For this SIP revision request, EPA will only be evaluating the new rule 6–1–1 subsections (a), (b), and (c) (formerly (a), (c), and (d)). In addition, by letter of March 17, 2003 to EPA, Indiana requested that EPA take no further action on the continuous compliance plan provisions in 326 IAC 6–1–10.1(l) through (v) and the Lake County contingency particulate matter contingency measures in 326 IAC 6–1–11.2.

III. What Is the EPA Proposing To Approve?

EPA is proposing to approve changes to 326 IAC 6–1 as revisions to the Indiana SIP. These revisions include exempting certain natural gas combustion sources from PM emissions limits and replacing the limits with a requirement that such sources may only burn natural gas. The other changes consist of certain cleanup provisions, such as removing limits for sources that have shut down and updating names of sources.

A. Provisions for Natural Gas Combustion Sources

Revised 326 IAC 6–1–1(b) states that PM limitations shall not be established for combustion units that burn only natural gas at sources or facilities identified in sections 8.1, 9, and 12 through 18 of the rule, as long as the units continue to burn only natural gas. The provisions of 326 IAC 6–1–1(b) apply to sources in Clark, Dearborn, Dubois, Howard, Marion, St. Joseph, Vanderburgh, Vigo, and Wayne counties.

This revision replaces PM limitations on gas-fired combustion units with the requirement that they only burn natural gas. Since natural gas combustion sources generally have very low PM emissions, enforcement of the ''natural gas only'' requirement will ensure that these units do not emit PM in excess of what would have been required under the previously approved rules. Revised 6–1–1(c) states that if the emission limits in sections 2 and 8.1 through 18 conflict with or are inconsistent with new source performance standards established in 326 IAC 12, then the more stringent limitations apply.

In addition, since this revised rule does not allow increased emissions over the current limits, this change is not expected to have an adverse effect on air quality. Therefore, EPA is proposing to approve this requested SIP revision.

B. Cleanup Revisions

These revisions affect several sections of 326 IAC 6–1. They are sections 1(a), 1.5, 2 through 6, 8.1, 9, 10.1(a) through (k), 11.1, and 12 through 18. They generally consist of adding definitions, minor wording changes, updating of source and facility names, and elimination of reference to sources or facilities that have shut down. While these changes will not result in a decrease in actual PM emissions, removal of sources and facilities that have shut down will result in a decrease in the emissions allowed under the rules. EPA is also proposing to approve the cleanup revisions into the SIP.

IV. What Is the EPA's Analysis of the Requested Revisions?

The primary revision replaces PM limitations on gas-fired combustion units with the requirement that they only burn natural gas. PM emissions from sources burning natural gas are typically very low. The AP–42 emission factor from natural gas combustion for filterable PM is 1.9 pounds per million standard cubic feet of natural gas. This is equivalent to 0.00186 pounds per million British Thermal Units. EPA assumes that all PM resulting from natural gas combustion is less than one micrometer (μm) in diameter. Therefore, the AP–42 PM emission factor is also a valid estimate of PM less than 10 μm diameter(PM–10) emissions. The addition of 326 IAC 6–1–1(b) is not expected to harm air quality because natural gas burns with low PM emissions. Therefore, the emissions will not exceed the current limits.

Additional revisions to other portions of 326 IAC 6–1 help clean up the rule. These revisions consist of adding definitions, minor rewording, updating of source and facility names, and elimination of reference to sources that have shut down. The rewording of the rule helps increase its clarity. Some facilities and sources have changed their names since the last update of the rule. These revisions update the name of those facilities and sources. Indiana has requested that EPA delete from the rule sources that have shut down. The updates and deletions will keep the SIP current.

V. What Are the Environmental Effects of These Actions?

Particulate matter interferes with lung function when inhaled. Exposure to PM can cause heart and lung disease. PM also aggravates asthma and bronchitis. Airborne particulate is the main source of haze that causes a reduction in visibility. It also is deposited on the ground and in the water. This harms the environment by changing the nutrient and chemical balance.

The addition of 326 IAC 6–1–1(b) will not cause sources to emit PM in excess of the emission limits because natural gas burns with low PM emissions. Since this SIP revision does not relax any emissions limits it will not have an adverse effect on air quality. Also, the elimination of limits on sources that have shut down will result in lower overall allowed PM emission limits.

VI. Public Comments

Any public comments submitted on the October 11, 2002 proposed rule must be resubmitted to be considered in this proposed rulemaking action. As stated above, comments must be received by October 16, 2003.

VII. Summary of EPA Action

EPA is proposing to approve revisions to 326 IAC 6–1, Indiana's PM emission limits. The revisions include the addition of a provision allowing sources in certain counties that are burning only natural gas to be exempt from PM emission limits and providing that if there are conflicting limits, the more stringent limitation will apply. Other revisions consist of adding a section of definitions, minor rewording, updating of source and facility names, and elimination of reference to sources that have shut down.

VIII. Statutory and Executive Order Reviews

Executive Order 12866, Regulatory Planning and Review

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

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action which does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

Dated: September 3, 2003.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 03–23592 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 185–1185; FRL–7559–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to approve a revision to the plan prepared by Missouri to maintain the 1-hour national ambient air quality standard (NAAQS) for ozone in the Missouri portion of the Kansas City maintenance area through the year 2012. This plan is applicable to Clay, Jackson and Platte Counties. This revision is required by the Clean Air Act. A similar notice pertaining to the Kansas portion of the Kansas City maintenance area is being done in conjunction with this document. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

DATES: Comments must be received on or before October 16, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Leland Daniels at *daniels.leland@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651, or by e-mail at *daniels.leland@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What are the criteria for approval of a maintenance plan?

What does Federal approval of a state regulation mean to me?

What is in the state's plan to maintain the standard?

Have the requirements for approval of a SIP revision been met?

What action is EPA taking?

What Is a SIP?

The Clean Air Act (CAA or Act) at section 110 requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Are the Criteria for Approval of a Maintenance Plan?

The requirements for the approval and revision of a maintenance plan are

found in section 175A of the CAA. A maintenance plan must provide a demonstration of continued attainment including the control measures relied upon, provide contingency measures for the prompt correction of any violation of the standard, provide for continued operation of the ambient air quality monitoring network, provide a means of tracking the progress of the plan, and include the attainment emissions inventory and new budgets for motor vehicle emissions.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is in the State's Plan To Maintain the Standard?

For the past ten years, Missouri has had a plan in place to maintain the 1-hour ozone standard in the Missouri portion of the Kansas City maintenance area through 2002. The CAA requires that the maintenance plan be revised to provide for maintenance for ten years after the expiration of the initial maintenance period. Missouri's submittal of December 17, 2002, contained a revised plan that describes what will be done during the next ten-year period to maintain the ozone standard in the Missouri portion of the Kansas City maintenance area through 2012. The following analysis will look at the elements necessary for approval of a maintenance plan and determine if they have been fulfilled.

1. Demonstration of Continued Attainment

This revised plan relies on an attainment level of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) to maintain the ozone standard through a combination of control measures. These measures include stationary, area and mobile source controls. The annual emissions from the entire area for 1999, a period when no excursions or violations of the standard occurred, and 2012, the last year of the maintenance plan, are shown in the table below.

EMISSIONS IN THE KANSAS CITY MAINTENANCE AREA

Year	Pollutant emission (tons per OSD[1])		
	VOC	NO_X	CO
1999	367.35	424.2	1706.0
2012	335.55	373.4	1337.8

[1] The term "ozone summer day" is abbreviated as OSD.

As can be seen, total emissions decreased during the ten-year maintenance period. Thus the plan has demonstrated that the 1-hour ozone standard will be maintained. The full emissions benefits obtained from state and Federal control measures are included in the table above. For the demonstration of maintenance, it is only necessary for the state to show that there is no increase in the emissions. Clearly excess emission benefits are included in the demonstration.

Control measures used to reduce emissions and maintain the standard are shown in the following list. These measures include stationary, mobile and area source controls.

LIST OF STATE RULES

State rules	Title
10 CSR 10–2.040	Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating.
10 CSR 10–2.080	Emission of Visible Air Contaminants from Internal Combustion Engines (rescinded 68 FR 12827, March 18, 2003). *See* 10 CSR 10–6.220.
10 CSR 10–2.090	Incinerators.
10 CSR 10–2.100	Open Burning Restrictions.
10 CSR 10–2.150	Time Schedule for Compliance.
10 CSR 10–2.205	Control of Emissions from Aerospace Manufacture and Rework Facilities.
10 CSR 10–2.210	Control of Emissions from Solvent Metal Cleaning.
10 CSR 10–2.215	Control of Emissions from Solvent Cleanup Operations.
10 CSR 10–2.220	Liquefied Cutback Asphalt Paving Restricted.
10 CSR 10–2.230	Control of Emissions from Industrial Surface Coating Operations.
10 CSR 10–2.260	Control of Petroleum Liquid Storage, Loading, and Transfer.
10 CSR 10–2.280	Control of Emissions from Perchloroethylene Dry Cleaning Installations (rescinded 68 FR 36470, June 18, 2003). *See* 10 CSR 10–6.075.
10 CSR 10–2.290	Control of Emissions from Rotogravure and Flexographic Printing Facilities.
10 CSR 10–2.300	Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.
10 CSR 10–2.310	Control of Emissions from the Application of Underbody Deadeners.
10 CSR 10–2.320	Control of Emissions from the Production of Pesticides and Herbicides.
10 CSR 10–2.330	Control of Gasoline Reid Vapor Pressure.
10 CSR 10–2.340	Control of Emissions from Lithographic Printing Facilities.
10 CSR 10–2.360	Control of Emissions from Bakery Ovens.
10 CSR 10–2.390	Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act.
10 CSR 10–6.075	Maximum Achievable Control Technology Regulations.
10 CSR 10–6.220	Restriction of Emission of Visible Air Contaminants.

In addition, the plan relies upon the Federal motor vehicle emissions control program in effect as of May 22, 2002. That program includes such rules as the following that limit emissions from vehicles and set certain fuel parameters:

- Tier 0 emission limits rule for model year (MY) 1980 and 1981 vehicles,
- Tier I starting with MY 1994,
- Tier II starting with MY 2004,
- National Low Emission Vehicles program (MY–97 for the northeast area and MY–2001 for the rest of the USA),

- On-board refueling vapor recovery starting with MY 1998,
- Heavy duty (HD) diesel rule starting with MY 1991,
- HD diesel rule starting with MY 2004, and
- HD diesel rule starting with MY 2007

2. Contingency Measures

As required by the CAA, contingency provisions are provided in the plan. During the first two years of the plan, 2003 and 2004, if a violation occurs anywhere within the maintenance area, the state committed to using transportation control measures sufficient to achieve at least a five percent reduction in area-wide emissions.

For the remaining years of the maintenance plan, 2005 through 2012, two different triggers would initiate an evaluation and selection of appropriate control measures to implement. A response would be invoked whenever a future emissions inventory shows that VOC or NO_X levels are more than five percent above the 1999 emission inventory levels or there is a pattern of exceedances measured at the ambient air quality monitors. At that time Missouri would work cooperatively with Kansas to evaluate and determine what and where controls may be required and the level of emissions reductions needed. The study would be completed within nine months and control measures adopted within 18 months of the determination. This time frame is similar to that in Kansas' revised maintenance plan.

A response would also be invoked whenever the NAAQS was violated. At that time an analysis would be completed within six months and control measures adopted within 18 months and implemented expeditiously taking into consideration the ease of implementation and the technical and economic feasibility of the selected measures. The state intends to implement any necessary contingency measures within 24 months after a violation of the 1-hour ozone standard. For both triggers, a number of potential point source, mobile source, and area source control measures are identified. Thus acceptable contingency provisions are provided in the plan as required by the CAA.

Emission control measures relied upon to maintain the NAAQS cannot be used as a contingency measure. Alternatively, emission control measures can be used as contingency measures to the extent that emissions reductions achieved by these rules are not necessary for maintaining the NAAQS. Clearly, the excess emissions reductions obtained from the Tier-II rule, heavy duty diesel standards and the Federal off-road engine standards not needed for maintenance of the NAAQS can be used as contingency measures.

The CAA requires the inclusion of contingency measures in a maintenance plan to promptly correct any violation of the standard. We believe that Missouri is committing to and will take action quickly to maintain the standard in the event of a violation. Missouri has listed measures to be considered, intends to implement any necessary contingency measures within 24 months after a violation, and established a process to develop contingency measures if needed. Therefore, we believe the SIP has fulfilled the requirement for including contingency measures in the plan as required by the CAA. Any failure by the state to implement contingency measures to address a violation of the 1-hour standard, within the 24-month time frame in the plan, would be a failure to implement the SIP.

3. Ambient Air Quality Monitoring

The current ambient air quality monitoring network consisting of six monitors operating in the Kansas City area is described. Two monitors are located in Liberty and Watkins Mill Park and are considered to be downwind monitors; two are placed in populated areas at Rocky Creek, previously located at Worlds of Fun and the Kansas City International Airport; one is placed upwind at Richards Gebaur Airport; and one is located downtown in Kansas City, Kansas. The state did commit to continue monitoring the air quality for the next ten years.

The ambient air quality is also described. During the initial ten-year period, the data indicates that a number of exceedances of the standard did occur from time to time. However, only two violations of the standard occurred during the time periods of 1993 through 1995 and again in 1995 through 1997. The state implemented continency measures to address these violations. Note that no excursion nor violation occurred during 1999, and no 1-hour violations have occurred since 1997.

A review of the design values also shows a decrease from the early nonattainment designation through the end of the first ten-year maintenance period from 0.14 parts per million (ppm) to 0.12 ppm. Although there was some fluctuation in the design value during the first ten-year maintenance period (1992—2002), the value was fairly stable ranging from 0.11 ppm to 0.13 ppm. From 1996 through September 30, 2001, the design values were below the value established in the Act for classifying the area as a marginal nonattainment area under section 181 of the Act.

As required, air quality in the metropolitan area has been monitored during the past ten-year period and the state has committed to continuing monitoring the air quality for the next ten-year maintenance period.

4. Tracking the Progress of the Plan

Continued maintenance of the ozone standard depends, in part, upon the state's efforts toward tracking air quality and VOC and NO_X emissions. As noted above, the state has committed to measuring air quality for the next ten-year period. In addition, the state has committed to updating the emissions inventory for the Missouri portion of the Kansas City maintenance area every three years. This inventory will include point, area, mobile and biogenic emissions sources. Under the discussion of the contingency measures, the state will compare future emission inventory levels to the 1999 emission inventory level. Lastly, the state will use the conformity analysis of transportation plans as a means of tracking mobile source VOC and NO_X precursor emissions in the future. Thus the state and EPA will utilize several methods for tracking the progress of the maintenance plan.

5. Emission Inventory and Motor Vehicle Emissions Budgets

An emissions inventory was prepared for the Kansas City area for the base year of 1999 following EPA's procedures as provided in the Emissions Inventory Improvement Program. The year 1999 year was selected for the inventory as no excursion nor violations of the standard occurred. Emissions were then projected for 2012. The MOBILE6 emissions model was used for on-road mobile sources. The draft NONROAD model released in June 2001 in support of the 2007 heavy-duty vehicle rule was used to generate the 1999 and 2012 emissions for off-road mobile sources. Area source emissions, on-road mobile source emissions and vehicle miles traveled for 2012 were based upon the new population and employment forecast approved by the Mid-American Regional Council (MARC) Technical Forecast Committee on July 11, 2002, and the MARC Board in August 2002. The emission inventory amounts are shown in the table below.

EMISSIONS INVENTORY OF THE KANSAS CITY AREA

Emissions category	1999 emissions (tons per OSD)			2012 emission (tons per OSD)		
	VOC	NO_X	CO	VOC	NO_X	CO
On-road Mobile	92.3	152.9	1092.4	45.5	74.2	579.0
Off-road Mobile	43.0	108.9	574.4	24.7	86.0	711.8
Biogenic	113.85	.....	.....	113.85	.....	.....
Area	89.9	23.3	24.9	112.1	26.0	27.7
Point	28.3	139.1	14.3	39.4	187.2	19.3
Total	367.35	424.2	1,706.0	335.55	373.4	1,337.8

Missouri has submitted a complete and accurate emissions inventory of VOC and NO_X for the Kansas City area and we are proposing to approve the emissions inventory.

Based upon the updated emissions inventory, the revised maintenance plan contains new budgets (or limits) for motor vehicle emissions resulting from transportation plans for the Kansas City area. Because emissions are less in 2012 than in 1999, our transportation conformity rule (40 CFR 93.124) allows for the allocation of amounts from one emissions category to another if it is provided for in the SIP. The SIP submission did quantify the amount by which the motor vehicle emissions could be higher while still providing for maintenance of the standard.

The new budgets must be found to meet the adequacy criteria in the transportation conformity rule before they are used for transportation conformity purposes. They were posted to our Web site *(http://www.epa.gov/otaq/transp/conform/adequacy.htm)* for public comment. These emission budgets have been under adequacy review since their submittal to us. We have reviewed the budgets and have found that the budgets meet all of the adequacy criteria in section 93.118 of the transportation conformity rule. These criteria include: (1) The SIP was endorsed by the Governor (or his designee) and was subject to a state public hearing; (2) consultation among Federal, state, and local agencies occurred; (3) the emissions budget is clearly identified and precisely quantified; (4) the motor vehicle emissions budget, when considered together with all other emissions, is consistent with attainment; and (5) the motor vehicle emissions budget is consistent with and clearly related to the emissions inventory and control strategy in the SIP. We are also required to consider comments submitted to the state at the public hearing. No comments were received by the state on the transportation conformity budgets. The new area-wide budgets are shown in the table below:

AREA-WIDE MOTOR VEHICLE EMISSIONS BUDGET FOR 2012

Pollutant	Amount (tons per OSD)
VOC	64.7
NO_X	97.8

These budgets support maintenance of air quality in the Kansas City area and, thus, were found adequate by us on March 17, 2003 (*see* 68 FR 33690, June 5, 2003). These new budgets are to be used in all subsequent conformity determinations concerning transportation plans in the Kansas City area.

We believe that the motor vehicle emissions budgets are consistent with the control measures identified in this maintenance plan and that this plan demonstrates maintenance with the 1-hour ozone standard. Separate from the adequacy process discussed above and for SIP purposes, in this document we are proposing to approve the transportation conformity budgets.

6. Legal Authority

The Missouri Air Conservation Commission was granted legal authority to develop and implement regulations regarding air pollution under section 643.050 of the Revised Statutes of Missouri. This includes the authority to adopt, implement, and enforce any subsequent emission control contingency measures determined to be necessary to correct future ozone problems.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

Our review of the material submitted also indicates that the state has revised the maintenance plan in accordance with requirements for a maintenance plan in section 175A of the CAA.

What Action Is EPA Taking?

We are proposing to approve:

- Missouri's revision of the maintenance plan for the Missouri portion of the Kansas City maintenance area,
- The emissions inventory, and
- The transportation conformity budgets.

We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments. You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 185–1185, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due

to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *Electronic mail.* Comments may be sent by e-mail to Leland Daniels at *daniels.leland@epa.gov.* Please include identification number, MO 185–1185, in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through *Regulations.gov,* EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *By Mail.* Written comments should be sent to the name and address listed above.

Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 4, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–23591 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS 184–1184; FRL–7559–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to approve a revision to the plan prepared by Kansas to maintain the 1-hour national ambient air quality standard (NAAQS) for ozone in the Kansas portion of the Kansas City maintenance area through the year 2012. This plan is applicable to Johnson and Wyandotte Counties. This revision is required by the Clean Air Act. A similar notice pertaining to the Missouri portion of the Kansas City maintenance area is being done in conjunction with this document. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

DATES: Comments must be received on or before October 16, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Leland Daniels, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Leland Daniels at *daniels.leland@epa.gov* or to *http://www.regulations.gov,* which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651, or by e-mail at *daniels.leland@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

What Is the Federal Approval Process for a SIP?
What are the Criteria for Approval of a Maintenance Plan?
What Does Federal Approval of a State Regulation Mean To Me?
What Is in the State's Plan To Maintain the Standard?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

What Is a SIP?

The Clean Air Act (CAA or Act) at section 110 requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Are the Criteria for Approval of a Maintenance Plan?

The requirements for the approval and revision of a maintenance plan are found in section 175A of the CAA. A maintenance plan must provide a demonstration of continued attainment including the control measures relied upon, provide contingency measures for the prompt correction of any violation of the standard, provide for continued operation of the ambient air quality monitoring network, provide a means of tracking the progress of the plan, and include the attainment emission inventory and new budgets for motor vehicle emissions.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is in the State's Plan To Maintain the Standard?

For the past ten years, Kansas has had a plan in place to maintain the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area through 2002. The CAA requires that the maintenance plan be revised to provide for maintenance for ten years after the expiration of the initial maintenance period. Kansas' submittal of December 17, 2002, contained a revised plan that describes what will be done during the next ten-year period to maintain the ozone standard in the Kansas portion of the Kansas City maintenance area through 2012. The following analyses will look at the elements necessary for approval of a maintenance plan and determine if they have been fulfilled.

1. Demonstration of Continued Attainment

This revised plan relies on an attainment level of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) to maintain the ozone standard through a combination of control measures. These measures include stationary, area and mobile source controls. The annual emissions from the entire area for 1999, a period when no excursions or violations of the standard occurred, and 2012, the last year of the maintenance plan, are shown in the table below.

EMISSIONS IN THE KANSAS CITY MAINTENANCE AREA

Year	Pollutant emission (tons per OSD [1])		
	VOC	NO_X	CO
1999	367.35	424.2	1706.0
2012	335.55	373.4	1337.8

[1] The term ozone summer day is abbreviated as OSD.

As can be seen, total emissions decreased during the ten-year maintenance period. Thus the plan has demonstrated that the 1-hour ozone standard will be maintained. The full emissions benefits obtained from state and Federal control measures are included in the table above. For the demonstration of maintenance, it is only necessary for the state to show that there is no increase in the emissions. Clearly excess emission benefits are included in the demonstration.

Control measures used to reduce emissions and maintain the standard are shown in the following list. These measures include stationary, mobile and area source controls.

LIST OF STATE RULES

State rules	Title
28–19–61 ..	Definitions.
28–19–62 ..	Testing procedures.
28–19–63 ..	Automobile and light duty truck surface coating.
28–19–64 ..	Bulk gasoline terminals.
28–19–65 ..	Volatile organic compounds liquid storage in permanent fixed roof tanks.
28–19–66 ..	Volatile organic compounds liquid storage in external floating roof tanks.
28–19–67 ..	Petroleum refineries.
28–19–68 ..	Leaks from petroleum refinery equipment.
28–19–69 ..	Cutback asphalt.
28–19–70 ..	Leaks from gasoline delivery vessels and vapor collection systems.
28–19–71 ..	Printing operations.
28–19–72 ..	Gasoline dispensing facilities.
28–19–73 ..	Surface coating of miscellaneous metal parts and products and metal furniture.
28–19–74 ..	Wool fiberglass manufacturing.
28–19–76 ..	Lithography printing operations.
28–19–77 ..	Chemical processing facilities that operate alcohol plants or liquid detergent plants.
28–19–714	Solvent metal cleaning.

LIST OF STATE RULES—Continued

State rules	Title
28–19–717	Control of volatile organic compound emissions from commercial bakery ovens in Johnson and Wyandotte Counties.
28–19–719	Fuel volatility.

In addition, the plan relies upon the Federal motor vehicle emissions control program in effect as of June 21, 2002. That program includes such rules as the following that limit emissions from vehicles and set certain fuel parameters:

—Tier 0 emission limits rule for model year (MY) 1980 and 1981 vehicles,
—Tier I starting with MY 1994,
—Tier II starting with MY 2004,
—National Low Emission Vehicles program (MY–97 for the northeast area and MY–2001 for the rest of the USA),
—On-board refueling vapor recovery starting with MY 1998,
—Heavy duty (HD) diesel rule starting with MY 1991,
—HD diesel rule starting with MY 2004, and
—HD diesel rule starting with MY 2007.

2. Contingency Measures

As required by the CAA, contingency provisions are provided in the plan. The state committed to reduce the total VOC emissions identified in the combined Johnson and Wyandotte County inventory by five percent in response to a future violation of the ozone standard. Prior to implementation, the Kansas Department of Health and Environment (KDHE) will review the latest applicable emissions inventory data, perform a comprehensive evaluation of control strategies and select those control measures that provide the greatest benefit and most cost-effective response to achieve the needed VOC emissions reduction. Control measures to be considered will include but will not be limited to the following measures:

—Stationary source controls (NO_X and VOC), including offsets,
—Review and evaluation of existing VOC regulations for the Kansas City metropolitan area to identify opportunities for additional reductions through amendment of these regulations as appropriate,
—Transportation control measurers (TCMs) (to the extent that VOC emissions reductions from these TCMs can be accurately defined and confirmed),
—Stage II vapor recovery, and
—Enhanced vehicle emissions reduction programs.

Once a violation of the NAAQS has been validated, the evaluation of control strategies will be completed within 180 days. Selection of the appropriate control measures will be done within 90 days of the completion of the evaluation. The state intends to implement any necessary contingency measures within 24 months after a violation of the 1-hour ozone standard subject to KDHE's administrative regulation procedures, legislative approval, and the mandatory public participation process.

The SIP contains a statement that funding must be provided by EPA to the state for the study of control measures once the NAAQS has been violated. Under section 175A of the CAA, states are obligated to identify and implement contingency measures for the prompt correction of any violation of the standard, regardless of whether funding is available.

In the response to comments, KDHE states, ''The statement [relating to funding] is not meant to limit the State's commitment, but does necessarily reflect the inherent limits on the State executive branch to commit future resources without legislative authorization. While funding may be presumed for planning purposes, failure by the agency [KDHE] to recognize this lack of spending powers risks challenges that could upset the SIP process in the future. The lack of authority in the State agency is even more compelling where the need for funding from a Federal agency is involved.'' We believe that the state has recognized its obligation under the CAA and has made the appropriate commitment to implement contingency measures within a reasonable time period of 24 months, if necessary. Therefore, we believe the SIP has fulfilled the requirement for including contingency measures in the plan as required in the CAA. Any failure by the state to implement contingency measures to address a violation of the 1-hour standard, within the 24-month time frame in the plan, would be a failure to implement the SIP.

3. Ambient Air Quality Monitoring

The current ambient air quality monitoring network consisting of six monitors operating in the Kansas City area is described. Two monitors are located in Liberty and Watkins Mill Park and are considered to be downwind monitors; two are placed in populated areas at Rocky Creek, previously located at Worlds of Fun and the Kansas City International Airport; one is placed upwind at Richards Gebaur Airport; and one is located downtown in Kansas City, Kansas. The state did commit to continue monitoring the air quality for the next ten years.

The ambient air quality is also described. During the initial ten-year period, the data indicates that a number of exceedances of the standard did occur from time to time. However, only two violations of the standard occurred during the time periods of 1993 through 1995 and again in 1995 through 1997. The state implemented continency measures to address these violations. Note that no excursion nor violation occurred during 1999, and no 1-hour violations have occurred since 1997.

A review of the design values also shows a decrease from the early nonattainment designation through the end of the first ten-year maintenance period from 0.14 parts per million (ppm) to 0.12 ppm. Although there was some fluctuation in the design value during the first ten-year maintenance period (1992—2002), the value was fairly stable ranging from 0.11 ppm to 0.13 ppm. From 1996 through September 30, 2001, the design values were below the value established in the Act for classifying the area as a marginal nonattainment area under section 181 of the Act.

As required, air quality in the metropolitan area has been monitored during the past ten-year period and the state has committed to continuing monitoring the air quality for the next ten-year maintenance period.

4. Tracking the Progress of the Plan

Continued maintenance of the ozone standard depends, in part, upon the state's efforts toward tracking air quality and VOC and NO_X emissions. As noted above, the state has committed to measuring air quality for the next ten-year period. In addition, the state has committed to updating the emissions inventory for the Kansas portion of the Kansas City maintenance area every three years. This inventory will include point, area, mobile and biogenic emissions sources. The state will compare future emission inventory levels to the 1999 emission inventory level. Thus the state and EPA will utilize several methods for tracking the progress of the maintenance plan.

5. Emissions Inventory and Motor Vehicle Emissions Budgets

An emissions inventory was prepared for the Kansas City area for the base year of 1999 following EPA's procedures as provided in the Emissions Inventory Improvement Program. The year 1999 year was selected for the inventory as no excursion nor violations of the standard occurred. Emissions were then projected

for 2012. The MOBILE6 emissions model was used for on-road mobile sources. The draft NONROAD model released in June 2001 in support of the 2007 heavy-duty vehicle rule was used to generate the 1999 and 2012 emissions for off-road mobile sources. Area source emissions, on-road mobile source emissions and vehicle miles traveled for 2012 were based upon the new population and employment forecast approved by the Mid-America Regional Council (MARC) Technical Forecast Committee on July 11, 2002, and the MARC Board in August 2002. The emission inventory amounts are shown in the table below.

EMISSIONS INVENTORY OF THE KANSAS CITY AREA

Emissions category	1999 emissions (tons per OSD)	2012 emissions (tons per OSD)				
		VOC	NO_X	CO	VOC	NO_X
On-road Mobile	92.3	152.9	1092.4	45.5	74.2	579.0
Off-road Mobile	43.0	108.9	574.4	24.7	86.0	711.8
Biogenic	113.85	.....	.....	113.85	.....	.....
Area	89.9	23.3	24.9	112.1	26.0	27.7
Point	28.3	139.1	14.3	39.4	187.2	19.3
Total	367.35	424.2	1706.0	335.55	373.4	1337.8

Kansas has submitted a complete and accurate emissions inventory of VOC and NO_X for the Kansas City area, and we are proposing to approve the emissions inventory.

Based upon the updated emissions inventory, the revised maintenance plan contains new budgets (or limits) for motor vehicles emissions resulting from transportation plans for the Kansas City area. Because emissions are less in 2012 than in 1999, our transportation conformity rule (40 CFR 93.124) allows for the allocation of amounts from one emissions category to another if it is provided for in the SIP. The SIP submission did quantify the amount by which the motor vehicle emissions could be higher while still providing for maintenance of the standard.

The new budgets must be found to meet the adequacy criteria in the transportation conformity rule before they are used for transportation conformity purposes. They were posted to our Web site *(http://www.epa.gov/otaq/transp/conform/adequacy.htm)* for public comment. These emission budgets have been under adequacy review since their submittal to us. We have reviewed the budgets and have found that the budgets meet all of the adequacy criteria in section 93.118 of the transportation conformity rule. These criteria include: (1) The SIP was endorsed by the Governor (or his designee) and was subject to a state public hearing; (2) consultation among Federal, state, and local agencies occurred; (3) the emissions budget is clearly identified and precisely quantified; (4) the motor vehicle emissions budget, when considered together with all other emissions, is consistent with attainment; and (5) the motor vehicle emissions budget is consistent with and clearly related to the emissions inventory and control strategy in the SIP. We are also required to consider comments submitted to the state at the public hearing. No comments were received by the state on the transportation conformity budgets. The new, area-wide budgets are shown in the table below:

AREA-WIDE MOTOR VEHICLE EMISSIONS BUDGET FOR 2012

Pollutant	Amount (tons per OSD)
VOC	64.7
NO_X	97.8

These budgets support maintenance of air quality in the Kansas City area and, thus, were found adequate on March 17, 2003 (see 68 FR 33690, June 5, 2003). These new budgets are to be used in all subsequent conformity determinations concerning transportation plans in the Kansas City area.

We believe that the motor vehicle emissions budgets are consistent with the control measures identified in this maintenance plan and that this plan demonstrates maintenance with the 1-hour ozone standard. Separate from the adequacy process discussed above and for SIP purposes, in this document we are proposing to approve the transportation conformity budgets.

6. Legal Authority

The Kansas Air Quality act that granted legal authority to the KDHE to develop and implement regulations regarding air pollution is found in the Kansas Statutes Annotated, section 65–3001 through 65–3028.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

Our review of the material submitted also indicates that the state has revised the maintenance plan in accordance with requirements for a maintenance plan in section 175A of the CAA.

What Action Is EPA Taking?

We are proposing to approve:

- Kansas' revision of the maintenance plan for the Kansas portion of the Kansas City maintenance area,
- The emissions inventory, and
- The transportation conformity budgets.

We are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments. You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, KS 184–1184, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you

include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. Electronic mail. Comments may be sent by e-mail to Leland Daniels at *daniels.leland@epa.gov*. Please include identification number, KS 184–1184, in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov,* click on ''To Search for Regulations,'' then select Environmental Protection Agency and use the ''go'' button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. By Mail. Written comments should be sent to the name and address listed above.

Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 4, 2003.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 03–23590 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC105–200331b; FRL–7559–6]

Approval and Promulgation of Implementation Plans, North Carolina: Miscellaneous Revisions to the Forsyth County Local Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Local Implementation Plan (LIP) submitted by the Forsyth County Environmental Affairs Department, through the State of North Carolina, for the purpose of amending or adding indirect heat exchangers, cotton ginning operations, bulk gasoline terminals, gasoline truck tanks and vapor collection systems and activities exempt from permit requirements and other miscellaneous rules within the Air Pollution Control Requirements subchapter. In the Final Rules Section of this **Federal Register**, the EPA is approving the Forsyth county LIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 16, 2003.

ADDRESSES: All comments should be addressed to: Rosymar De La Torre Colón; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections I.B.1.i. through iii.) which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosymar De La Torre Colón, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Ms. De La Torre Colón can also be reached via electronic mail at *delatorre.rosymar@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 28, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–23583 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–271–0412b; FRL–7551–9]

Revisions to the California State Implementation Plan, Monterey Bay Unified and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compounds (VOC) emissions from organic solvents, animal reduction, leather processing, and industries coating glass products. We are proposing to rescind and approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 16, 2003.

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

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814. Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536. San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, EPA Region IX, (415) 947–4120.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: MBUAPCD Rules 414 and 430 and SJVUAPCD Rules 4610 and 4661. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules and rule rescissions in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 5, 2003.

Debbie Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 03–23589 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[IA 183–1183; FRL–7559–7]

Approval and Promulgation of Operating Permits Program; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Iowa Operating Permits Program for air pollution control submitted to EPA on March 11, 2002, and July 17, 2002. This action proposes approval of numerous rules adopted by the state in 2002. Iowa rule revisions addressed in this action pertain to the deadlines for which an application for a significant modification is due, and Title V insignificant activities, and insignificant emission levels. Approval of these revisions will ensure consistency between the state and federally-approved rules.

DATES: Comments on this proposed action must be received in writing by October 16, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Judith Robinson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to *robinson.judith@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in ''What action is EPA taking'' in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Judith Robinson at (913) 551–7825, or by e-mail at *robinson.judith@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's operating permits program revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse

comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: September 4, 2003.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 03–23585 Filed 9–15–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 68, No. 179

Tuesday, September 16, 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

Submission for OMB Review; Comment Request

September 10, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_ Beverly_ OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Permit for Movement of Restricted Animals.

OMB Control Number: 0579–0051.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of the 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic animal diseases, as well as to take actions to prevent and to manage exotic animal diseases. Disease prevention is the most effective method of maintaining a healthy animal population and for enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in the world market of animals and animal product trade. When farm animals become sick or have been exposed to a disease, it is important that they be removed promptly from their farms. When transporting animals across state lines, the owner completes VS Form 1–27, ''Permit for Movement of Restricted Animals''.

Need and Use of the Information: APHIS will collect the owner's name, address, the animals' point of origin and destination, the number of animals being moved, the purpose of the movement, and various pieces of animal identification data so that each animal can be identified. Meat inspector to report the slaughter of the animals to veterinary services also uses VS Form 1–27. Without the information, APHIS would be unable to effectively monitor and control the movement of sick animals, a situation that could seriously compromise the health of the U.S. livestock population.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 996.

Animal and Plant Health Inspection Service

Title: Poultry Imports and Export.

OMB Control Number: 0579–0141.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as to take actions to prevent and to manage exotic diseases such as exotic Newcastle disease (END) and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. The regulations under which disease prevention activities are contained are in Title 9, Chapter 1, Subchapter D, and Parts 91 through 99 of the Code of Federal Regulations. The purpose of these regulations is to allow poultry meat that originates in the United States to be shipped, for processing purposes, to a region where exotic Newcastle disease exists, and then returned to the United States. The process entails the use of four information collection activities in the form of a certificate of origin, serial numbers, records that must be maintained, and cooperative service agreements that must be signed.

Need and Use of the Information: APHIS will collect information to ensure that imported poultry carcasses pose a negligible risk of introducing END into the United States.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4.

Frequency of Responses: Recordkeepking; Reporting: On occasion.

Total Burden Hours: 30.

Animal and Plant Health Inspection Service

Title: Tuberculosis, TB in Cattle, Bison, and Goats.

OMB Control Number: 0579–0146.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of the 21 U.S.C. These authroities permit the Secretary to prevent, control and eliminate domestic animal diseases, such as tuberculosis and brucellosis, as well as to take actions to prevent and to manage exotic animal diseases. Disease prevention is the most effective method of maintaining a healthy animal population and for enhancing the Animal and Plant Health Inspection Service (APHIS) ability to compete in the world market of animals and animal

product trade. APHIS participates in the Cooperative State-Federal Bovine Tuberculosis Eradication Program, which is a national program to eliminate bovine tuberculosis from the United States. Part 77 of Title 9, Code of Federal Regulations, provides for the assignment of tuberculosis risk classifications for States, for the creation of tuberculosis risk status zone within the same State, and for conducting of tests before regulated animals are permitted to move interstate. The zone system enhances the ability of States to move healthy, tuberculosis-free cattle, bison, goats, and captive cervids interstate as well as internationally. The zoning, testing and movement activities will require the use of several information collection activities.

Need and Use of the Information: APHIS will collect the following: (1) Submission of a formal request that a zone within a given State is given a different tuberculosis status than the rest of the State, (2) an epidemiological review of reports of all testing for all zones within the State within 30 days of testing, (3) the submission of an annual report to APHIS in order to quality for renewal of accredited free State or zone status, (4) the completion of a certificate of tuberculin test that must accompany certain regulated animals that are moved interstate, (5) the retention, for 2 years, of any certificates documenting the movement of regulated animals into and out of zones; and (6) the creation of a tuberculosis herd management plan as a tool for eradicating the disease within a State or zone. Without the information, APHIS would not be able to operate an effective tuberculosis surveillance, containment, and eradication program.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 210.

Frequency of Responses: Recordkeepking; Reporting: On occasion.

Total Burden Hours: 636.

Animal and Plant Health Inspection Service

Title: Phytosanitary Certificates for Imported Fruits and Vegetables.

OMB Control Number: 0579–0184.

Summary of Collection: The United States Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant Quarantine Act and the Federal Plant Pest Act authorize the Department to carry out this mission. The Animal and Plant Health Inspection Service (APHIS) published a final rule that will require all fruits and vegetables entering the United States from foreign regions to be accompanied by a phytosanitary certificate. The use of phytosanitary certificates is the approach that regulatory officials around the world are increasingly relying on to help reduce the introduction and spread of plant pests.

Needs and Use of the Information: APHIS will use the phytosanitary certificate to determine the pest condition of the shipment at the time it was inspected in its country of origin. APHIS will also collect information to determine the intensity of the inspection that is performed when the shipment arrives in the United States. Without this information, APHIS would need to inspect each and every shipment very thoroughly to ensure that no pests were accompanying the shipment.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 25,000.

Forest Service

Title: Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter.

OMB Control Number: 0596–0015.

Summary of Collection: The Forest Service (FS) is the largest owner and operator of aircraft in the federal government outside of the Department of Defense. To conduct the Forest Service land management mission FS uses 44 owned aircraft with 315 aircraft on loan to 18 States for fire suppression activities. The majority of FS flying is in support of wildland fire suppression. In addition to the agency-owned aircraft, the FS contracts with approximately 400 vendors for aviation services used in resource protection and administrative projects. Contractor aircraft and pilots are used to place water and chemical retardants on fires, provide aerial delivery of firefighters to fires, perform reconnaissance, resource surveys, search for lost personnel, and fire detection. Contracts for such services established rigorous qualification requirements for pilots and specific condition/equipment/performance requirements for aircraft. The authority is granted under the Federal Aviation Administration Regulations in Title 14 (Aeronautics and Space) of the Code of Federal Regulations.

Needs and Use of the Information: FS will collect information using FS forms to document the basis for approval of contract pilot and aircraft for use in specific FS aviation missions. The information collected from contract pilots in face-to-face meetings (such as name, age, pilot's license number, number of hours flown in type of aircraft, etc.) is based on the length and type of contract but is usually done on a reoccurring annual basis. Without the information supplied on these forms, FS contracting officers and pilot/aircraft inspectors cannot determine if pilots and aircraft meet the detailed qualification, and condition requirements essential to safe efficient accomplishment of FS specified flying missions and which are included in contract specifications.

Description of respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,030.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 258.

Forest Service

Title: Application for Permit Non-Federal Commercial Use of Roads by Order.

OMB Control Number: 0596–0016.

Summary of Collection: The Forest Service (FS) transportation system includes approximately 380,000 miles of roads. These roads are grouped into five maintenance levels. Level one includes roads which are closed and maintained only to protect the environment. Level of maintenance increase to level five which is maintained for safe passenger car use. The roads usually provide the only access to commercial products including timber and minerals found on both Federal and private lands within and adjacent to National Forests. Annual maintenance not performed becomes a backlog that creates a financial burden for the FS. To remedy the backlog and pay for needed maintenance the FS requires commercial users to apply and pay for a permit, to use the FS Road System. Maintenance resulting from commercial use is accomplished through collection of funds or requiring the commercial users to perform the maintenance. The vehicle for this is the Road Use Permit. The authority for the Road Use Permit process comes from 36 CFR 212.5, 36 CFR 212.9 and 36 CFR 261.54. Section 212.9 authorizes the FS to develop a road system with private in holders that is mutually beneficial to both parties.

Need and Use of the Information: Persons wishing to haul commercial will use form FS 7700–40. The form provides identifying information about the applicant such as the name; address; telephone number; description of mileage of roads; purpose of use; use schedule; and plans for future use. FS will use the information to prepare the applicant's permit to identify the road maintenance that is the direct result of the applicant's traffic, to calculate any applicable collections for recovery of past Federal investments in roads and assure that the requirements are met. Without the Road Use Permit, the backlog of maintenance would increase and the FS would have great difficulty providing the transportation system necessary to meet its mission.

Description of Respondents: Business or other for-profit; Individuals or households; State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 2000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 500.

Rural Business-Cooperative Service

Title: Notice of Funds Availability Inviting Applications for the Renewable Energy Systems and Energy Improvements Grant Program.

OMB Control Number: 0570–0044.

Summary of Collection: The establishing of the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006 requires the Secretary of Agriculture to create a program to make direct loans, loan guarantees, grants to farmers, ranchers and rural small business to purchase renewable energy systems and make energy efficiency improvements. The program is designed to help farmers, ranchers and rural small businesses reduce energy cost and consumption, develop new income streams and help meet the nation's critical energy needs. Mandatory funding beginning in fiscal year (FY) 2003 is provided to the Rural Business-Cooperative Service (RBS) annually for 5 years; however, RBS has decided to execute the grant program only for FY 2003.

Need and Use of the Information: RBS will use the information to determine applicant/grantee eligibility, project feasibility and to ensure that grantees operate on a sound basis and use grant funds for authorized purposes.

Description of Respondents: Business or other for-profit.

Number of Respondents: 133.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 6,251.

Rural Utilities Service

Title: 7 CFR Part 1738, Rural Broadband Access.

OMB Control Number: 0572–NEW

Summary of Collection: Adding Title VI, Rural Broadband Access, amended The Rural Electrification Act of 1936 (RE Act), to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities in States and territories of the United States. The regulation prescribes the types of loans available, facilities financed and eligible applicants, as well as minimum credit support requirements considered for a loan. In addition, Title VI of the RE Act requires that Rural Utilities Service (RUS) make or guarantee a loan only if there is reasonable assurance that the loan together with all outstanding loans and obligations of the borrower will be repaid in full within the time agreed.

Need and Use of the Information: RUS will collect information to determine whether an applicant's eligibility to borrow from RUS under the terms of the RE Act and that the applicant complies with statutory, regulatory and administrative eligibility requirements for loan assistance. RUS will use the information to determine that the Government's security for loans made are reasonably adequate and that the loans will be repaid within the time agreed.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 28,475.

Rural Housing Service

Title: 7 CFR 1980–D, Rural Housing Loans.

OMB Control Number: 0575–0078.

Summary of Collection: The Rural Housing Service (RHS) is a credit agency for rural development for the U.S. Department of Agriculture. The purpose of the Guaranteed Rural Housing (GRH) program is to assist low and moderate-income individuals and families in acquiring or constructing a single-family residence in a rural area with loans made by private lenders. Eligibility for this program includes low to moderate-income families or persons whose income does not exceed 115% of the median income for the area. The information requested by RHS includes borrower financial information such as household income, assets and liabilities, and monthly expenses.

Need and Use of the Information: All information collected is vital for RHS to determine if borrowers qualify for all the assistance for which they are eligible. Information requested by lenders is required to ensure lenders are eligible to participate in the GRH program and are in compliance with OMB Circular A–129. If the information were collected less frequently or not at all, the agency could not effectively monitor lenders and assess the program.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 37,456.

Frequency of Responses: Reporting: Monthly; On occasion.

Total Burden Hours: 120,442.

Rural Housing Service

Title: 7 CFR 1940–G, Environmental Program.

OMB Control Number: 0575–0094.

Summary of Collection: The National Environmental Policy Act (NEPA) requires Federal agencies prior to the approval of proposed actions to consider the potential environmental impacts of these actions. Consequently, for the agencies to comply with NEPA, it is necessary to have information on the types of environmental resources on site or in the vicinity that might impact the proposed action. Also, information is required on the nature of the project selected by the applicant.

Need and Use of the Information: The agency will collect environmental data using form RD 1940–20, Request for Environmental Information. Having all activities and environmental information on the proposed project site will enable the Agency official to determine the magnitude of the potential environmental impacts and whether the project is controversial for environmental reasons. The agency failure to collect environmental information would result in a violation of NEPA. Thus, the agency would have no basis to support a decision regarding the need for an environmental impact statement.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,915.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 21,812.

National Agricultural Statistics Service

Title: Farm and Ranch Irrigation Survey.

OMB Control Number: 0535–0234.

Summary of Collection: The Farm and Ranch Irrigation Survey (FRIS) has provided detailed data on water management practices and water uses in American agriculture for the past two decades. The 2003 FRIS will gather data describing the irrigation activities of U.S. farm operations. Some of these activities are of national concern, such as the use of chemigation, fertigation and water-conserving practices of irrigators. The FRIS is an integral part of the 2002 Census of Agriculture and is conducted under the authority of the Census of Agriculture Act of 1997 (Pub. L. 105–113).

Need and Use of the Information: NASS will collect information from the FRIS on acres irrigated by land use category, acres and yields of irrigated and non-irrigated crops, quantity of water applied and method of application to selected crops, acres irrigated and quantity of water used by sources, acres irrigated by type of water distribution systems, and number of irrigation wells and pumps. The primary purpose of FRIS is to provide detailed data relating to on-farm irrigation activities for use in preparing a wide variety of water-related local programs, economic models, legislative initiatives, market analyses, and feasibility studies. The absence of FRIS would certainly affect irrigation policy decision.

Description of Respondents: Farms.

Number of Respondents: 25,000.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 15,250.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–23528 Filed 9–15–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Guaranteed Farm Loan Programs

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the extension and revision of currently approved information used in support of the guaranteed Farm Loan Programs (FLP). The collection of information is intended to reduce paperwork burden on program participants and agency employees, make assistance available to more farmers, reduce the costs of the program, and enhance the fiscal integrity of the program.

DATES: Comments on this notice must be received on or before November 17, 2003 to be assured consideration.

ADDRESSES: Comments concerning this notice should be addressed to Tracy L. Jones, Senior Loan Officer, USDA Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522, and to: the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted by email to: *tracy_jones@wdc.usda.gov.* Copies of the information collection may be obtained by contacting Tracy Jones.

FOR FURTHER INFORMATION CONTACT: Tracy Jones, Loan Making Division, (202) 720–3889.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 762—Guaranteed Farm Loans.

OMB Control Number: 0560–0155.

Expiration Date of Approval: March 31, 2004.

Type of Request: Extension and Revision to a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number 0560–0155 is needed to effectively administer the FSA guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating commercial lenders. The basic objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The reporting requirements imposed on the public by the regulations at 7 CFR part 762 are necessary to administer the guaranteed loan program in accordance with statutory requirements of the Consolidated Farm and Rural Development Act and are consistent with commonly performed lending practices. Collection of information after loans are made is necessary to protect the Government's financial interest.

Estimate of Respondent Burden: Public reporting burden for the collection of information in this regulation is estimated to average 0.7535 hours per response. Respondents: Commercial Banks, Farm Credit System, farmers and ranchers.

Estimated Number of Respondents: 5,500 lenders, 9,000 loan applicants.

Estimated Number of Responses per Respondent: 49.90 per lender, 2.14 per loan applicant.

Estimated Total Annual Burden on Respondents: 221,360.

Comment is invited on: (a) Whether collection of information is necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the Office of Management and Budget Approval.

Signed in Washington, DC on September 9, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–23529 Filed 9–15–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of the Natural Resources Conservation Service (NRCS) to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Brush Management, Forage Harvest Management, Irrigation System—Sprinkler, Irrigation Water Conveyance—Ditch and Canal Lining—Flexible Membrane, Stream Crossing, Structure for Water Control, and Well Decommissioning. These standards are used to convey national guidance in developing Field Office Technical Guide Standards used in the States and

the Pacific Basin and Caribbean Areas. NRCS State Conservationists and Directors for the Pacific Basin and Caribbean Areas who choose to adopt these practices for use within their States/areas will incorporate them into Section IV of their Field Office Technical Guides. These practices may be used in resource management systems that treat highly erodible land, or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received for a 30-day period, starting on the date of this publication. This series of new or revised conservation practice standards will be adopted after the close of the 30-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890. The telephone number is (202) 720–5023. The standards are also available, and can be downloaded from the Internet at: *http://www.ftw.nrcs.usda.gov/practice_stds.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available, for public review and comment, proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments on the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed in Washington, DC, on September 4, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–23576 Filed 9–15–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 030527134–3220–02]

Data Sharing Activity

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) conducts the Survey of Industrial Research and Development (R&D). The National Science Foundation (NSF) provides the funding for this data collection. The Census Bureau will provide data collected from the 1997 and 1999 R&D surveys to the Bureau of Economic Analysis (BEA) for statistical purposes exclusively. In accordance with the requirement of section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we provided the opportunity for public comment on this data-sharing action (see the June 3, 2003, edition of the **Federal Register** (68 FR 33094)). Through the use of these shared data, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames. The NSF will be provided non-confidential aggregate data (public use) and reports that have cleared Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

DATES: The Census Bureau will make the data collected from the 1997 and 1999 Survey of Industrial Research and Development available to BEA on September 16, 2003.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this program should be directed to Kimberly Moore, Assistant Division Chief for Special Studies and M3 Programs, Manufacturing and Construction Division, U.S. Census Bureau, 4700 Silver Hill Road, Washington, DC 20233–6900, by phone on (301) 763–7643 or by fax (301) 457–4583.

SUPPLEMENTARY INFORMATION:

Background

CIPSEA (Pub. L. 107–347, Subtitle V) allows the Census Bureau and the BEA to share certain business data for statistical purposes exclusively. Section 524(d) of the Act required a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment).

On June 3, 2003 (68 FR 33094), the Census Bureau published in the **Federal Register** a notice of this proposed data-sharing activity and request for comment on the subject. The Census Bureau did not receive any public comments.

Shared Data

The Census Bureau will provide the BEA with data collected from the 1997 and 1999 R&D surveys. The BEA also will share data from its 1997 Foreign Direct Investment in the United States and 1999 U.S. Direct Investment Abroad surveys with the Census Bureau. The BEA issued a separate notice addressing this issue.

The BEA will use these data for statistical purposes exclusively. Through record linkage, the BEA will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys, and improve its survey sample frames.

Statistical Purposes for the Shared Data

The data collected from the R&D survey estimate the expenditures of research and development performed by United States-based industrial firms. The survey is conducted annually; however, the data to be shared are from the 1997 and 1999 surveys only. Statistics from the annual surveys are published in the NSF's annual publication series ''Research and Development in Industry.'' Data collected by this survey include company characteristics and R&D spending information. Characteristics data include net sales, total employment, and employment of scientists and engineers. R&D spending data include the following: total spending; federally funded (total and by agency) spending for basic and applied R&D, for basic research by field, and for applied R&D by product group and energy and pollution abatement activities; R&D spending by state; and R&D financed by domestic firms but performed abroad. All data are collected under sections 131, 182, 224, and 225 of Title 13, United States Code (U.S.C.).

Data Access and Confidentiality

Title 13, U.S.C., protects the confidentiality of these data. These data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. All BEA employees with access to these data will attain Census Bureau Special Sworn Status—meaning that they, under penalty of law, must uphold the data's confidentiality. Selected NSF employees will provide the BEA with expertise on the aspects of R&D performance in the United States and by U.S. companies abroad; these NSF consultants assisting with the work at the BEA also will

attain Census Bureau Special Sworn Status. No confidential data will be provided to the NSF. To further safeguard the confidentiality of these data, the Census Bureau will conduct an Information Technology security review of the BEA prior to sharing any data files. Any results of this research are subject to Census Bureau disclosure protection.

Dated: September 10, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–23526 Filed 9–15–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2003]

Proposed Foreign-Trade Zone—Alexandria, Louisiana; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Commissioners of the England Economic and Industrial Development District, to establish a general-purpose foreign-trade zone at sites in Alexandria, Louisiana, adjacent to the Morgan City, Louisiana, Customs port of entry. The FTZ application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 8, 2003. The applicant is authorized to make the proposal under Sections 61, 64 and 65 of Title 51 of the Louisiana Revised Statutes of 1950, as amended.

The proposed zone would consist of three sites covering 1,828 acres in the Alexandria area: *Site 1* (1594 acres)—within the 2,351-acre England Airpark complex (owned by the applicant), 1611 Arnold Drive, Alexandria; *Site 2* (124 acres)—at the Port of Alexandria (owned by the Alexandria Regional Port Authority), 600 Port Road, Alexandria; and, *Site 3* (110 acres)—within the Central Louisiana Eco Business Park (owned by the Central Louisiana Chamber of Commerce), 7636 Highway 1, South, Alexandria. The England Airpark was formerly the England Air Force Base and is currently being developed for commercial use. The Alexandria International Airport and it's fueling facilities are included within the Airpark.

The application indicates a need for zone services in the Alexandria, Louisiana, area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on October 16, 2003, at 11 a.m., in the Board Room of the England Economic & Industrial Development District, 1611 Arnold Drive, Alexandria, Louisiana 71303.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW., Washington, DC 20230.

The closing period for their receipt is November 17, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 1, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Offices of the England Economic & Industrial Development District, 1611 Arnold Drive, Alexandria, Louisiana 71303.

Dated: September 8, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–23621 Filed 9–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2003]

Foreign-Trade Zone 40—Cleveland, Ohio, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 10, 2003.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board Order 870, 62 FR 7750, 2/20/97; June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); April 2002 (Board Order 1224, 67 FR 20087, 4/15/02); and, August 2003 (Board Order 1289, 68 FR 52384, 9/3/03; Board Order 1290, 68 FR 52384, 9/3/03; and, Board Order 1295, 68 FR 52383, 9/3/03).

The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* (1,339 acres)—Port of Cleveland complex, Cleveland Bulk Terminal and Tow Path Valley Business Park, Cleveland; *Site 2* (175 acres)—the IX Center (formerly the ''Cleveland Tank Plant''), in Brook Park, adjacent to the Cleveland Hopkins International Airport; *Site 3* (1,942acres)—Cleveland Hopkins International Airport complex and the adjacent Snow Road Industrial Park, Brook Park; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; *Site 8* (174 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville; *Site 9* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; and, *Site 10* (15 acres)—Frane Industrial Park, Forman Road, Ashtabula. An application is pending with the FTZ Board to expand FTZ 40 to include a site at the Harbour Point Business Park in Vermilion, Ohio (Docket 33–2003).

The applicant is now requesting authority to expand existing Site 3 to include the Brook Park Road Industrial Park (322 acres), 17601 Brook Park Road, Brook Park (Cuyahoga County). The site is immediately adjacent to the Cleveland Hopkins International Airport and is being developed as an industrial

park. It is owned by the Ford Motor Company. The site will provide public warehousing and distribution services to area businesses. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building, Suite 4100W, 1099 14th Street, NW., Washington, DC 20005.

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB, Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is November 17, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 1, 2003).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: September 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–23622 Filed 9–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 12, 2003, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V., and its affiliate, GCC Cemento, S.A. de C.V. The period of review is August 1, 2001, through July 31, 2002.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: September 16, 2003.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3477 or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2003, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. See *Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico*, 68 FR 25327 (Preliminary Results).

We invited parties to comment on the *Preliminary Results*. In June 2003, we received case and rebuttal briefs from the petitioner, the Southern Tier Cement Committee, and from the respondents, CEMEX, S.A. de C.V. (CEMEX), and GCC Cemento, S.A. de C.V. (GCCC). The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and customs purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review, and to which we have responded, are listed in the Appendix to this notice and addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Jeffrey May, Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, dated September 9, 2003, which is hereby adopted by this notice. The Decision Memorandum is on file in Import Administration's Central Records Unit, Room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memorandum is available on the Internet at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have corrected certain programming and clerical errors in our preliminary results, where applicable. These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average margin exists for the collapsed parties, CEMEX and GCCC, for the period August 1, 2001, through July 31, 2002:

Exporter/manufacturer	Weighted-average percentage margin
CEMEX/GCCC	79.81

Assessment Rates

The Department shall determine, and the Bureau of Customs and Border Protection (Customs) shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate. For the sales in the United States through the respondent's affiliated U.S. parties, we divided the total dumping margin for

the reviewed sales by the total entered value of those reviewed sales. We will direct Customs to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the entries during the review period (see 19 CFR 351.212(a)).

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Cash-Deposit Requirements

As discussed in the Decision Memorandum, we have determined that it is appropriate to require a per-unit cash-deposit amount for entries of subject merchandise produced or exported by CEMEX/GCCC. The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash-deposit amount for CEMEX/GCCC will be $61.60 per metric ton; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 61.85 percent, which was the ''all others'' rate in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico*, 55 FR 29244 (July 18, 1990). The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: September 9, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix Issues in the Decision Memorandum

1. Revocation
2. Sales-Below-Cost Test
3. Arm's-Length Test
4. Regional Assessment
5. Bag vs. Bulk
6. Adverse Facts Available
7. Swap Sales
8. Difference-in-Merchandise Adjustment
9. Selling Expenses
10. Cash Deposits
11. Interest Rate for Credit Expenses
12. Ministerial Errors

[FR Doc. 03–23619 Filed 9–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Designation of the San Francisco Bay National Estuarine Research Reserve, California

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, has designated certain lands and waters of San Francisco Bay in California as the San Francisco Bay National Esturaine Research Reserve.

On August 27, 2003, Vice Admiral Conrad C. Lautenbacher, Under Secretary for Oceans and Atmosphere, signed findings designating the San Francisco Bay National Estuarine Research Reserve in California pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461, and its implementing regulations at 15 CFR part 921. The State of California Coastal Zone Management Program has certified that the Reserve designation is consistent to the maximum extent practicable with its program. A copy of the official Record of Decision is available for public review from NOAA's Office of Ocean and Coastal Resource Management at the address below.

FOR FURTHER INFORMATION CONTACT: Nina Garfield at (301) 713–3155, extension 171, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM5, Silver Spring, Maryland 20910.

Dated: September 9, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–23539 Filed 9–15–03; 8:45 am]

BILLING CODE 3510–08–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 03–C0003]

Brunswick Corp., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 118.20. Published below is a provisionally-accepted Settlement Agreement with Brunswick Corporation, containing a civil penalty of $1,000,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 1, 2003.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 03–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 11, 2003.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff (''staff'') of the U.S. Consumer Product Safety Commission (''the Commission'') and Brunswick Corporation (''Brunswick'' or ''Respondent''), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''). This Settlement Agreement settles the staff's allegations set forth below.

I. The Parties

2. The Commission is an independent Federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

3. Brunswick is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices located at 1 North Field Court, Lake Forest, IL 60045.

II. Allegations of the Staff

4. Between June 1998 and June 2000, Brunswick manufactured and distributed nationwide approximately 40,000 Mongoose and Roadmaster bicycles. By Us International Corporation, a Taiwanese corporation, manufactured the Ballistic 105 fork (''fork'') that was welded onto these bicycles.

5. The Mongoose and Roadmaster bicycles are sold to and/or are used by consumers for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, ''consumer products'' as defined in section 3(a)(1) of the consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent was a ''manufacturer'' and ''distributor'' of the Mongoose and Roadmaster bicycles, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (5), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (5), (11), and (12).

6. The forks of these bicycles are defective because they can break apart during normal and foreseeable use of the bicycles, causing riders to lose control, fall and suffer serious injuries such as facial abrasions, dental trauma, broken bones, and lacerations requiring sutures.

7. Between September 1998 and September 1999, Brunswick received at least 14 incident reports involving the bicycles' forks breaking apart during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries known to Brunswick included broken and lost teeth, broken bones, jaw fractures, abrasions, concussions, and lacerations requiring sutures.

8. In September 1999, Brunswick concluded that there might be a problem with the bicycles' forks.

9. In October 1999, Brunswick asked By Us to determine the scope of a recall and met with the president of By Us on November 18, 1999. At the meeting By Us told Brunswick that one of its subcontractors, Akisu Machinery Company, Ltd. (''Akisu''), had improperly welded the forks onto the bicycles. Brunswick reported to the Commission on November 19, 1999, about the bicycles' forks breaking apart.

10. By the time Brunswick reported to the Commission on November 19, 1999, Brunswick had knowledge of at least 19 incident reports involving the bicycles' forks breaking apart.

11. In July 2000, two months after the commencement of the recall, Brunswick obtained at least six additional incident reports involving the bicycles' forks breaking apart. The serial numbers of these forks were outside the range of bicycles recalled. By August 2000, Brunswick knew of another three incident reports involving the bicycles' forks breaking apart. The serial numbers of these forks also fell outside the range of bicycles recalled.

12. In August 2000, By Us gave Brunswick the serial numbers of all forks manufactured by its subcontractor, Akisu. The serial numbers of these forks included bicycles outside the range of those Brunswick had recalled.

13. Brunswick did not report to the Commission until October 30, 2000, about the defect in forks on bicycles outside the scope of the recall.

14. In each of the instances described in paragraphs 4 through 13 above, Brunswick obtained information which reasonably supported the conclusion that the bicycles' forks described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

15. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Brunswick violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

16. Brunswick committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Brunswick to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Brunswick's Response

17. Brunswick denies the staff's allegations that it violated the CPSA as set forth in paragraphs 14 through 16 above.

IV. Agreement of the Parties

18. The Consumer Product Safety Commission has jurisdiction over this matter and over Brunswick under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

19. This Agreement is entered into for settlement purposes only and does not constitute an admission by Brunswick or a determination by the Commission that Brunswick knowingly violated the CPSA's Reporting Requirement.

20. In settlement of the staff's allegations, Brunswick agrees to pay a civil penalty in the amount of one million and 00/100 dollars ($1,000,000.00) as set forth in the incorporated Order.

21. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

22. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

23. The Commission may publicize the terms of the Settlement Agreement and Order.

24. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.*, and

that a violation of this Order may subject Brunswick to appropriate legal action.

25. This Settlement Agreement may be used in interpreting the Order, Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

26. The provisions of this Settlement Agreement and Order shall apply to Brunswick and each of its successors and assigns.

Respondent, Brunswick Corporation.

Dated: May 20, 2003.

Lloyd W. Chatfield, II,

Assistant Secretary, Brunswick Corporation, 1 North Field Court, Lake Forest, IL 60045.

Dated: May 27, 2003.

Erika Z. Jones,

Mayer, Brown, Rowe & Maw, 1900 K Street, NW., Washington, DC.

Commission Staff.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: May 28, 2003.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Brunswick Corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Brunswick Corporation; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered that upon final acceptance of the Settlement Agreement and Order, Brunswick Corporation shall pay to the Commission a civil penalty in the amount of *One Million and 00/100 Dollars* ($1,000,000.00) within twenty (20) days after service upon Respondent of this Final Order of the Commission.

Provisionally accepted and Provisional Order issued on the 11th day of September, 2003.

By Order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–23617 Filed 9–15–03; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 03–C0002]

Murray, Inc., a Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 C.F.R. 1118.20. Published below is a provisionally-accepted Settlement Agreement with Murray, Inc., a corporation, containing a civil penalty of $375,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 1, 2003.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 03–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 11, 2003.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff (''the staff'') of the U.S. Consumer Product Safety Commission (''the Commission'') and Murray, Inc. (''Murray'' or ''Respondent''), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''). This Settlement Agreement settles the staff's allegations set forth below.

I. The Parties

2. The Commission is an independent Federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

3. Murray is a corporation organized and existing under the laws of the State of Tennessee with its principal corporate offices located in Brentwood, Tennessee.

II. Allegations of the Staff

A. Rear-Engine Riding Lawnmower

4. Between January 1995 and January 2002, Murray manufactured and distributed nationwide approximately 89,500 rear-engine riding lawnmowers, model numbers 30560, 30565, 30577x7, 502.256210, 536.270211, 536.270212, 30560x7, 30577x8, 502.256220, MOM611115A59, 30560x60, 60575x8, 30577x31, 502.270210, MOM6115A89, 30560x99, 30575x31, 502.251250, and 502.270211.

5. The rear-engine riding lawnmowers are sold to consumers for use in or around a permanent or temporary household or residence and are, therefore, ''consumer products'' as defined in section 3(a)(1)(i) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1)(i). Respondent is a ''manufacturer'' and ''distributor'' of the rear-engine riding lawnmowers, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (5), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (5), (11), and (12).

6. The rear-engine riding lawnmowers' fuel tanks can crack and leak fuel and the leaking fuel can ignite, posing a burn or fire hazard to consumers.

7. In the fall 2000, one of Murray's retail customers told Murray that it had replaced four or five fuel tanks on rear-engine riding lawnmowers because of complaints of fuel leakage.

8. Murray asked the two manufacturers of the fuel tanks to compile and to review all engineering and manufacturing data regarding the fuel tanks. Murray never followed through on its request to the two manufacturers of the fuel tanks for the engineering and manufacturing data regarding the fuel tanks.

9. By December 2000, Respondent had retrieved five fuel tanks for which consumers alleged a fuel leak. Respondent's evaluation of these fuel tanks indicated fuel leakage.

10. In February 2001, one of Murray's retail customers directed a consumer complaint to Murray. In its communication, the retail customer told Murray of its legal obligation under section 15(b) of the CPSA to report to the Commission if it found that the rear-engine riding lawnmower contained a defect which could create a substantial product hazard.

11. In September 2001, one of Respondent's retail customers directed

another consumer complaint to Respondent.

12. On December 14, 2001, Murray received a request for information from the staff regarding an incident involving the rear-engine riding lawnmower. Upon receipt of the staff's inquiry, Murray initiated an investigation into claims involving its rear-engine riding lawnmowers.

13. Upon reviewing its record in December 2001 and January 2002, Murray discovered that from 1997 through 2001 it had received about 880 reports of fuel tank leakage involving its rear-engine riding lawnmower, five of which resulted in fires with one report of minor burn injuries.

14. Based on information synthesized during Murray's December 2001–January 2002 investigation, on January 16, 2002, Murray reported to the Commission about the rear-engine riding lawnmower's fuel tank cracking and leaking fuel.

15. Despite being aware of the information set forth in paragraphs 4 through 14 above, Murray did not report to the Commission until January 16, 2002.

16. Murray obtained information which reasonably supported the conclusion that the rear-engine riding lawnmower as described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

17. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Murray violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

18. Murray committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Murray to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

B. Mid-Engine Riding Lawnmower

19. Between January 2001 and January 2002, Murray manufactured and distributed nationwide approximately 6,200 mid-engine riding lawnmowers, model numbers 309005X10, 309304X8, and 309306X89.

20. The mid-engine riding lawnmowers are sold to consumers for use in or around a permanent or temporary household or residence and are, therefore, ''consumer products'' as defined in section 3(a)(1)(i) of the CPSA, 15 U.S.C. 2052(a)(1)(i). Murray is a ''manufacturer'' and ''distributor'' of the mid-engine riding lawnmowers, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (5), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (5), (11), and (12).

21. The mid-engine riding lawnmowers' fuel tanks can crack and leak fuel and the leaking fuel can ignite, posing a burn or fire hazard to consumers.

22. In July 2001, Murray's European distributor advised Murray of a possible weld seam issue involving the mid-engine riding lawnmower's fuel tank.

23. In August 2001, one of Respondent's retail customers notified Respondent of several reports of gas leaks involving the mid-engine riding lawnmower.

24. During August 2001, Murray notice an increased number of orders form its authorized service centers requesting replacement fuel tanks for the mid-engine riding lawnmower as a result of fuel leaks.

25. In September 2001, Murray tested 12 fuel tanks for fuel leakage, and found some of the tested tanks showed evidence of cracking and fuel leakage.

26. On or about September 19, 2001, the manufacturer of the mid-engine riding lawnmower's fuel tank told Murray that it has substituted a different type of material since the beginning of production. Murray immediately instructed its supplier to begin using the specified material. Murray placed a hold on distributing the mid-engine riding lawnmower pending installation of the proper fuel tank.

27. On or about November 19, 2001, an independent laboratory told Respondent that the failure of the gas tank was due to multiple, brittle fatigue cracks that initiated at the base of the tank due to concentration of applied cyclic bending stress due to vibration during service. The report also noted that the failed tank had a much lower molecular weight and was significantly more brittle than the comparative tank. The brittle nature of the polymer made it more prone to cracking.

28. On or about January 18, 2002, Murray received a complaint from a consumer alleging a leaking fuel tank. At that time, Murray examined its records and found that between June 2001 and January 2002 it had received 70 complaints and 145 warranty claims of fuel leakage, including one report of a fire.

29. Based on Murray's investigation, on February 5, 2002, Murray reported to the Commission about the mid-engine riding lawnmower's fuel tank cracking and leaking fuel.

30. Despite being aware of the information set forth in paragraphs 19 through 29 above, Murray did not report to the Commission until February 5, 2002.

31. Murray obtained information which reasonably supported the conclusion that the mid-engine riding lawnmower as described in paragraph 19 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

32. By failing to provide information in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Murray violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

33. Murray committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Murray to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Murray's Response

34. Murray denies each and every staff allegation as set forth in paragraphs 4 through 33 above.

35. Murray denies that the rear-engine riding lawnmower contains any defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(b) or 16 CFR part 1115 and further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

36. In January 2002, information became apparent to Murray and it promptly and voluntarily filed a report on the rear-engine riding lawnmower under section 15 of the CPSA, and worked cooperatively with the staff to conduct a comprehensive recall plan under the Commission's Fast Track program.

37. Murray denies that the mid-engine riding lawnmower contains any defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b) or 16 CFR part 1115.

38. In January 2002, information became apparent to Murray and it promptly and voluntarily filed a report on the mid-engine riding lawnmower under section 15 of the CPSA and worked cooperatively with the staff to conduct a comprehensive recall plan

under the Commission's Fast Track program.

39. Murray enters this Settlement Agreement and Order for settlement purposes only, to avoid incurring additional legal costs and expenses. In settling this matter, Murray does not admit any fault, liability or statutory or regulatory violation.

IV. Agreement of the Parties

40. The Consumer Product Safety Commission has jurisdiction over this matter and over Murray under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

41. This Agreement is entered into for settlement purposes only and does not constitute an admission by Murray that it has violated the law nor a determination by the Commission of any disputed issue of law or fact.

42. In settlement of the staff's allegations, Murray agrees to pay a civil penalty in the amount of three hundred seventy-five thousand dollars and 00/100 cents ($375,000.00) as set forth in the incorporated Order.

43. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, ad completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access of Justice Act.

44. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register.**

45. The Commission may publicize the terms of the Settlement Agreement and Order.

46. The Commission's Order in this matter is issued under the provision of the CPSA, 15 U.S.C. 2051 *et seq.,* and a violation of this Order shall subject Murray to appropriate legal action.

47. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretation apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

48. The provisions of this Settlement Agreement and Order shall apply to Murray and each of its successors and assigns.

Respondent, Murray, Inc.

Dated: June 3, 2003.

James C. Pelletier,

President and Chief Operating Officer, Murray, Inc., 219 Franklin Road, Brentwood, TN 27027.

Dated: June 9, 2003.

Kerrie L. Hook,

Collier Shannon Scott, PLLC, 3050 K Street, NW., Washington, DC 20007.

Commission Staff.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: June 10, 2003.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Murray, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Murray, Inc; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered that upon final acceptance of the Settlement Agreement and Order, Murray, Inc. shall pay to the Commission a civil penalty in the amount of *Three Hundred Seventy-Five Thousand and 00/100 Dollars* ($375,000.00) within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the attached Settlement Agreement.

Provisionally accepted and Provisional Order issued on the 11th day of September, 2003.

By Order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–23618 Filed 9–15–03; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds for Next Generation Grants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding availability.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') announces the availability of approximately $4,000,000 to award *Next Generation Grants* to eligible nonprofit organizations. The purpose of these grants is to foster the next generation of national service organizations by providing seed money to help new and start-up organizations, and established organizations proposing new projects or programs, plan and implement new service programs that have the potential of becoming national in scope. These funds are available under authority provided in Pub. L. 108–7, the Omnibus Appropriations Act for fiscal year 2003.

These grants will fund innovative strategies to effectively engage volunteers in service, which result in measurable outcomes to beneficiaries and participants. We are seeking innovative models that fall under at least one of three service areas: Programs that engage individuals in an intensive commitment to service in communities (defined as serving at least 40 hours per week); volunteer programs for seniors (age 55+); and programs that connect service with education. Organizations may focus on various issue areas including, but not limited to: Education, environment, health and human services, homeland security, public safety, or other critical areas.

Eligible applicants for this funding are nonprofit charitable organizations, such as public charities, community organizations (faith-based and secular), private foundations, and individual schools. Applicants other than individual schools generally will have an annual operating budget of $500,000 or less. We encourage submissions from community organizations (faith-based and secular) and from organizations with little or no experience with federal grants, where our investment could dramatically increase community involvement in service. Applicants cannot have received a previous grant award from the Corporation. Applicants must also be able to develop programs that have the potential for becoming national in scope, or provide a compelling statement that the model could be replicated in other locations.

Note: This Notice is not a complete description of the activities to be funded or of the application requirements. For supplementary information and concept paper guidelines go to the Corporation's Web site at *http://www.cns.gov/whatshot/notices.html.* Any future updates, and additional guidance on 2004 living allowance parameters, will also be posted at the Corporation's Web site.

DATES: The Corporation must receive your concept paper, budget, IRS form 990, and a completed Survey Ensuring Equal Opportunity for Applicants by 5 p.m. e.s.t. on November 17, 2003. The Corporation will *not* consider concept papers, budgets, survey's, or IRS form 990's received after this date.

ADDRESSES: Your concept paper, budget, and other items should be submitted by paper. Paper submissions (and an electronic version of the same concept paper and budget on a 3.5″ diskette in Microsoft Word or a text format or on CD–Rom) must be sent to the following address: Corporation for National and Community Service, 1201 New York Avenue, NW., Box NGG, Washington, DC 20525. Due to delays in delivery of regular mail to government offices, there is no guarantee that a paper submission sent by regular mail will arrive in time for consideration. Thus, we suggest that, when submitting your documents, you use USPS priority mail or a commercial overnight delivery service to ensure timely submission. We will not accept concept papers, budgets, survey's, or IRS form 990's submitted via facsimile or e-mail.

FOR FURTHER INFORMATION CONTACT: Shanika Ratliff at (202) 606–5000 ext. 408 or at *nextgeneration@cns.gov.* The TDD number is 202–565–2799. For a printed copy of this notice, the supplementary information guidelines, and concept paper instructions (also available on-line) contact Shanika Ratliff. Upon request, this information will be made available in alternate formats for people with disabilities.

There will be a series of technical assistance conference calls to answer questions arising under this announcement. The dates and times for these calls are: September 24, 2003, from 2–4 p.m. e.d.t.; October 9, 2003, from 2–4 p.m. e.d.t.; and, November 3, 2003, from 2–4 p.m. e.s.t. The dial-in number is 1–888–793–1858 and the pass code is ''next generat.'' We strongly encourage all potential applicants to be present on one of these calls. Availability is limited to the first 125 participants.

Dated: September 10, 2003.

David Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 03–23525 Filed 9–15–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,496,301: Helical Fiber Amplifier, Navy Case No. 79,001.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Paul A. Regeon, Acting Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *regeon@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: September 9, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–23541 Filed 9–15–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Ecolab, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Ecolab, Inc., a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned invention described in U.S. Patent Application Serial No. 10/237,074 filed September 9, 2002, entitled ''Ion Selective Electrodes for Direct Organic Drug Analysis in Saliva, Sweat, and Surface Wipes'', Navy Case No. 83,326 in the field of testing and monitoring of water, wastewater and water-based cleaning and sanitizing solutions in industrial and institutional facilities.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than October 1, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Paul A. Regeon, Acting Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, e-mail: *regeon@nrl.navy.mil* or use courier delivery to expedite response. (Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: September 9, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–23540 Filed 9–15–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 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 Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 11, 2003.

Angela C. Arrington, Leader,

Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Student Right-to-Know Regulations (SRK).

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 8,500; Burden Hours: 228,150.

Abstract: The SRK requires institutions that participate in any program under Title IV of the Higher Education Act (HEA) to make available to students and prospective student-athletes and their parents, high school coaches and high school counselors the graduation rates as well as enrollment data and the graduation rates of student athletes, by race, gender, and sport. Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2346. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to 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. 03–23577 Filed 9–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–03ER03–27; Advanced Detector Research Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Division of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Advanced Detector Research Program. Applications should be from investigators who are currently involved in experimental high energy physics, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the new detector technologies needed to perform future high energy physics experiments.

DATES: To permit timely consideration for award in Fiscal Year 2004, formal applications submitted in response to this notice should be received before December 2, 2003.

Applicants are requested to submit a letter of intent by November 3, 2003, which includes the title of the proposal, the name of the principal investigator(s), the requested funding, and a one-page abstract. Failure to submit a letter of intent will not negatively prejudice a responsive formal application submitted in a timely manner.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. It is suggested that this registration be completed several days prior to the date on which you plan to submit the formal application. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. IIPS offers the option of submitting multiple files—please limit submissions to only one file within the volume if possible, with a maximum of no more than four files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific proposal as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *helpdesk@pr.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

Letters of intent referencing Program Notice DE–FG01–03ER03–27 should be submitted via e-mail at the following e-mail address: *Michael.Procario@science.doe.gov.* Please include the phrase ''ADR letter of intent'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Procario, SC–20/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1290. Telephone: (301) 903–2890. e-Mail: *Michael.Procario@science.doe.gov.*

SUPPLEMENTARY INFORMATION: Future high energy physics experiments will require higher performance detectors to exploit the higher beam energies and intensities of new or upgraded accelerators. Higher performance detectors are also needed to probe for new physical processes in both accelerator-based and non-accelerator-based experiments. Proposed detector research should be driven by the anticipated needs of experiments to be built within the foreseeable future. Generic detector research that could be applied to upgrades that have not yet been approved would also be appropriate. It is expected that the final

engineering or fabrication of detectors for specific experiments will not be funded by this program. Interesting technologies would include but not be limited to charged particle track detectors, calorimeters, or particle identification detectors that are less sensitive to radiation, have higher resolution, are lower in cost, or can be read out faster than currently available detectors. Proposals to develop detector technology that is targeted at experiments for an energy frontier e^+e^- linear collider should not be submitted under this notice unless additional credible uses for the technology are described.

It is anticipated that in Fiscal Year 2004 approximately $500,000 will be available for new awards. The number of awards will be determined by the number of excellent applications and the total funds available for this program. The average size of an award in the last two years has been $55,000 per year. Multiple year grants should be requested if the project cannot be completed in one year. A maximum of three years will be considered. Out-year funding will be provided on an annual basis subject to availability of funds. Cost sharing is encouraged but not required.

Applicants are welcome to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories, and Federally Funded Research and Development Centers (FFRDCs), which include the DOE National Laboratories. In the case of collaborative applications submitted from different institutions that are directed at a single research activity, each application must have a different scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. There must be a single technical description of the proposed work, and separate face pages and budget pages for each institution. The scope of work at each institution must be clearly specified. While collaboration with researchers at FFRDCs (Fermi National Accelerator Laboratory and other DOE national labs are examples of FFRDCs), is encouraged, no funds will be provided to those organizations under this notice. The procedure for submitting a collaborative application can be accessed via the web at: *http://www.sc.doe.gov/production/grants/Colab.html.* This section provides specific details regarding collaborating institutions and states, ''The lead organization must submit their own grant application plus the other collaborator's applications to DOE in one package with a cover letter which describes the role to be played by each organization, the managerial arrangements, and the advantages of the multi-organizational effort.''

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

In considering item 1 particular attention will be paid to:

- the importance of the physics that motivates developing the proposed detector,
- whether the proposed research is generic detector research that will benefit more than one experiment,
- the magnitude of the potential impact versus the risk of failure.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.*

In addition, for this notice, project descriptions must be 25 pages or less, including tables and figures, but excluding forms and certifications. The application must also contain an abstract or project summary, letters of intent from all non-funded collaborators, and short curriculum vitae of all senior personnel. Principal investigators should limit themselves to submitting one proposal to the ADR program.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on September 10, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–23566 Filed 9–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Thursday, October 2, 2003 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Discussion and Approval of Recommendation on the draft Interim Measure/Interim Remedial Action document for the Present Landfill

2. Discussion and Approval of the Board's Transition Plan Outlining Work Scope Activities and Budget Needs through Closure at Rocky Flats

3. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North

Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deborah French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on September 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–23565 Filed 9–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Publishing of the Petition for Waiver of Mitsubishi Electric From the DOE Commercial Package Air Conditioner and Heat Pump Test Procedure (Case No. CAC–008)

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

ACTION: Notice of Petition for Waiver and solicitation of comments.

SUMMARY: Today's notice publishes a ''Petition for Waiver'' from Mitsubishi Electric and Electronics USA, Inc. (MEUS). The MEUS Petition requests a waiver of the test procedures applicable to commercial package air conditioners and heat pumps. The Department of Energy (DOE) is soliciting comments, data, and information with respect to the Petition for Waiver.

DATES: The Department will accept comments, data, and information with respect to this Petition for Waiver on or before October 16, 2003.

ADDRESSES: Send written comments and statements to: U.S. Department of Energy, Building Technologies Program, Case No. CAC–008, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121.

Copies of public comments received, this notice, and the Petition for Waiver may be read at the Freedom of Information Reading Room (Room 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, telephone: (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611; e-mail: *Michael.Raymond.ee.doe.gov;* or Francine Pinto, Esq., or Thomas DePriest, *Esq.,* U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov,* or *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the ''Energy Conservation Program for Consumer Products other than Automobiles.'' Part C of Title III (42 U.S.C. 6311–6317) provides for a program entitled ''Energy Efficiency of Industrial Equipment,'' which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today's notice involves commercial equipment under Part C, which specifically provides for definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. With respect to test procedures, Part C generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which reflect energy efficiency, energy use and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314)

For commercial package air-conditioning and heating equipment, EPCA provides that the test procedures shall be those generally accepted industry testing procedures developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) This section also provides for the Secretary of Energy to amend the test procedure for a product if the industry test procedure is amended, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B))

The relevant test procedure for purposes of today's notice and referenced in the version of ASHRAE 90.1 in effect in 1992 is ARI 210/240 (1989), ''Standard for Unitary Air-Conditioning and Air-Source Heat Pump Equipment.'' The Air-Conditioning and Refrigeration Institute subsequently modified the 1989 version of the test procedure. The Department issued a Notice of Proposed Rulemaking proposing to adopt ARI 210/240 (1994) (65 FR 48828, Aug. 9, 2000), but has not taken final action with respect to that proposal. Thus, the currently applicable test procedure is contained in ARI Standard 210/240 (1989).

The Department's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products and electric motors. These provisions are set forth in 10 CFR 430.27 and 10 CFR 431.29. However, there are no waiver provisions for other covered commercial equipment. The Department proposed waiver provisions for covered commercial equipment on December 13, 1999 (64 FR 69597), as part of the commercial furnace test procedure rule. The Department expects to publish a final rule codifying this process in 10 CFR 431.201. Until that time, DOE will apply to commercial equipment the waiver provisions for consumer products and electric motors. These waiver provisions are substantively identical.

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (10 CFR 430.27 (a)(1), 10 CFR 431.29 (a)(1)) Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

On June 13, 2003, MEUS filed a Petition for Waiver from the test procedures applicable to commercial package air conditioning and heating equipment. In particular, MEUS seeks a waiver from the currently applicable test procedures contained in ARI 210/

240 (1989), and from the test procedures contained in ARI 210/240 (1994), that the Department has proposed to adopt.

MEUS requests a waiver from the test procedures for the following basic product models:

CITY MULTI Variable Refrigerant Flow Zoning System R–2 Series Outdoor Equipment:
- PURY–80TMU, 80,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PURY–100TMU, 100,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Y Series Outdoor Equipment:
- PUHY–80TMU, 80,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUHY–100TMU, 100,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- PUY–80TMU, 80,000 Btu/h, 208/230–3–60 split-system variable-speed air conditioner
- PUY–100TMU, 100,000 Btu/h, 208/230–3–60 split-system variable-speed air conditioner

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment [1]:
- PCFY Series—Ceiling Suspended—PCFY–16/24/40/48***-*
- PDFY Series—Ceiling Concealed Ducted—PDFY–08/10/12/16/20/24/28/32/40/48***-*
- PEFY Series—Ceiling Concealed Ducted, Low External Static Pressure—PEFY–08/10/12***-*
- PEFY Series—Ceiling Concealed Ducted, High External Static Pressure—PEFY–16/20/24/28/32/40/48***-*
- PFFY Series—Floor Standing—PFFY–08/10/12/16/20/24***-*
- PKFY Series—Wall-Mounted—PKFY–08/10/12/16/20/24/32/40***-*
- PLFY Series—4-Way Airflow Ceiling Cassette—PLFY–12/16/20/24/32/40/48***-*
- PLFY Series—2-Way Airflow Ceiling Cassette—PLFY–08/10/12/16/20/24/32/40/48***-*
- PMFY Series—1-Way Airflow Ceiling Cassette—PMFY–08/10/12/16***-*

MEUS seeks a waiver from the applicable test procedures because, MEUS asserts, the current test procedures evaluate CITY MULTI VRFZ system products in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data. MEUS claims that the energy usage of the CITY MULTI VRFZ systems cannot be representatively measured using the current test procedures for the following reasons:

1. The test procedures provide for testing of the pair of indoor and outdoor assemblies making up a typical split system, but provide no direction about how to test CITY MULTI systems with which literally millions of combinations of indoor units could be used with any given outdoor assembly.

2. The test procedures call for testing ''matched assemblies, '' but CITY MULTI systems are designed to be used in zoning systems where the capacity of the indoor units does not match the capacity of the outdoor unit.

3. The test procedures do not accommodate infinite variability in compressor speed.

4. The test procedures do not account for the capability of simultaneous heating and cooling.

The MEUS petition requests that DOE grant a waiver from existing test procedures until such time as a representative test procedure is developed and adopted for this class of products. MEUS intends to work with ARI to develop appropriate test procedures.

The Department is publishing the MEUS ''Petition for Waiver'' in its entirety. The Petition contains no confidential information. The Department solicits comments, data, and information with respect to the Petition. The Department is particularly interested in receiving comments and views of interested parties concerning any alternate test procedures, or modifications to test procedures, that the Department could use to fairly represent the energy efficiency of MEUS' CITY MULTI products. Any person submitting written comments must also send a copy of such comments to the petitioner. 10 CFR 430.27(b)(1)(iv).

Issued in Washington, DC, on September 9, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Mitsubishi Electric & Electronics USA, Inc.

HVAC Advanced Products Division, 4505–A Newpoint Place, Lawrenceville, GA 30043, Phone: 678–376–2900, Fax: 678–376–3540 or 800–889–9904.

Mr. David K. Garman, Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–0121.

June 13, 2003.

Re: Petition for Waiver of Test Procedure.

Dear Assistant Secretary Garman: Mitsubishi Electric & Electronics USA, Inc. (MEUS) respectfully submits this petition to the Department of Energy (DOE) for a waiver of the test procedures applicable to commercial package air conditioners and heat pumps, as established in ARI 210/240 (1989), for MEUS's CITY MULTI Variable Refrigerant Flow Zoning System products.[2]

Background—CITY MULTI Variable Refrigerant Flow Zoning Systems

MEUS's line of CITY MULTI Variable Refrigerant Flow Zoning (VRFZ) System products, offered by the HVAC Advanced Products Division of MEUS, combines advanced technologies to provide a new approach to comfort conditioning. CITY MULTI VRFZ systems are complete, commercial zoning systems that save energy through the effective use of variable refrigerant control and distribution, zoning diversity, and system intelligence.

CITY MULTI VRFZ systems have the capability of connecting a single outdoor unit to up to 16 indoor units, giving these systems tremendous installation flexibility with over a million potential system combinations. The operating characteristics of a VRFZ system allow each indoor unit to have a different set temperature and a different mode of operation (*i.e.*, on/off/heat/cool/fan), allowing great flexibility of operation. The variable speed compressor and the system controls direct refrigerant flow throughout the system to precisely match the performance of the system to the load of the conditioned areas. The compressor is capable of reducing its operating capacity to as little as 16% of its rated capacity. The outdoor fan motor also has a variable speed drive to properly match the outdoor coil to indoor loads. Zone diversity enables VRFZ systems to have a total connected indoor unit capacity of up to 150% of the capacity of the outdoor unit. The CITY MULTI R2 Series, the first member of this MEUS product family to be introduced into the U.S. market, is capable of simultaneously providing cooling to one or more zones while heating other zones using advanced heat recovery methods.

[1] The * denotes engineering differences in the models.

[2] As of this petition, DOE has not codified procedures concerning waiver of test procedures for commercial package air conditioners and heat pumps. However, we assume that DOE will employ the same procedures it uses for processing requests for waivers of other test procedures. *See* 10 CFR 430.27 (2002) (procedures for waiver from test procedures for consumer products) and 10 CFR 431.29 (2002) (procedures for waiver from test procedures for electric motors). While there are no final regulations for commercial package air conditioners and heat pumps, in a 1999 Notice of Proposed Rulemaking, DOE proposed procedures and standards for granting waivers and interim waivers from test procedures for commercial package air conditioners and heat pumps, in a 1999 Notice of Proposed Rulemaking, DOE proposed procedures and standards for granting waivers and interim waivers from test procedures for commercial heating and air conditioning equipment. These proposed procedures are similar to those codified for other products. In particular, DOE proposed to grant waivers where the prescribed test procedures evaluate the basic model ''in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.'' 64 FR 69598 (Dec. 13, 1999) (to be codified at 10 CFR 431.601).

Test Procedures From Which Waiver Is Requested

MEUS seeks a waiver from the test procedures applicable, for purposes of the Energy Policy and Conservation Act (EPCA), to commercial package air conditioning and heating equipment. In particular, MEUS seeks a waiver from the currently applicable test procedures provided in ARI 210/240 (1989), and from the test procedures provided in ARI 2140/240 (1994) that the Department has proposed to adopt.

Section 343(a)(4)(A) of EPCA provides that the test procedures for purposes of EPCA shall be those generally accepted procedures referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992. Section 343(a)(4)(B) of EPCA provides for the Secretary to amend the test procedure for a product if the industry test procedure is modified, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria.

The ARI test procedures referenced in the version of ASHRAE 90.1 in effect in 1992 are ARI 210/240 (1989). ARI has subsequently modified the 1989 version of the test procedures several times. The Department issued a Notice of Proposed Rulemaking proposing to adopt ARI 210/240 (1994),[3] but has not taken final action with respect to that proposal. Thus, the currently applicable test procedures for EPCA purposes are contained in ARI Standard 210/240 (1989).

While the proposal to adopt ARI 210/240 (1994) has not been finalized as of the filing of this petition, we understand that it is under active consideration. Therefore, we request waiver from the applicable test procedures, including ARI 210/240 (1989) or ARI 210/240 (1994) if adopted, so as to avoid the need to request another waiver if the 1994 version is adopted by the Department.

Basic Models for Which Waiver Is Requested

MEUS requests a waiver from the test procedures for the following basic product models:

CITY MULTI Variable Refrigerant Flow Zoning System R–2 Series Outdoor Equipment:
- —PURY–80TMU, 80,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- —PURY–100TMU, 100,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump

CITY MULTI Variable Refrigerant Flow Zoning System Y Series Outdoor Equipment:
- —PUHY–80TMU, 80,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- —PUHY–100TMU, 100,000 Btu/h, 208/230–3–60 split-system variable-speed heat pump
- —PUY–80TMU, 80,000 Btu/h, 208/230–3–60 split-system variable-speed air conditioner
- —PUY–100TMU, 100,000 Btu/h, 208/230–3–60 split-system variable-speed air conditioner

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:[4]
- —PCFY Series—Ceiling Suspended—PCFY–16/24/40/48***-*
- —PDFY Series—Ceiling Concealed Ducted—PDFY–08/10/12/16/20/24/28/32/40/48***-*
- —PEFY Series—Ceiling Concealed Ducted, Low External Static Pressure—PEFY–08/10/12***-*
- —PEFY Series—Ceiling Concealed Ducted, High External Static Pressure—PEFY–16/20/24/28/32/40/48***-*
- —PFFY Series—Floor Standing—PFFY–08/10/12/16/20/24***-*
- —PKFY Series—Wall-Mounted—PKFY–08/10/12/16/20/24/32/40***-*
- —PLFY Series—4-Way Airflow Ceiling Cassette—PLFY–12/16/20/24/32/40/48***-*
- —PLFY Series—2-Way Airflow Ceiling Cassette—PLFY–08/10/12/16/20/24/32/40/48***-*
- —PMFY Series—1-Way Airflow Ceiling Cassette—PMFY–08/10/12/16***-*

Need for Waiver of the Test Procedure

MEUS seeks a waiver from the applicable test procedures because the current test procedures evaluate CITY MULTI VRFZ System products ''in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.''[5] The energy usage of the CITY MULTI VRFZ Systems cannot be representatively measured using the current test procedures for several reasons discussed below.

1. *The test procedure provides for testing of the pair of indoor and outdoor assemblies making up a typical split system, but provides no direction about how to test CITY MULTI systems with which literally millions of combinations of indoor units could be used with any given outdoor assembly.*

The ARI test procedures do not provide for separate testing of indoor and outdoor components of split systems. Rather, they provide for the indoor and outdoor elements to be tested together. In particular, the test procedure provides that ''the requirements of rating outlined in this standard are based upon the use of matched assemblies.'' ARI Standard 210/240 3.2 (1989).[6] Virtually all of the systems covered by this test procedure have one outdoor unit matched to one indoor coil,[7] so the test procedure's direction to test ''matched assemblies'' can be straightforwardly applied. With CITY MULTI VRFZ Systems, however, there is no standard configuration of outdoor and indoor units that can be tested together as representative. The products are intended to be used in zoning systems, and each outdoor unit can be connected with up to 16 separate indoor units in a zoned system. Moreover, MEUS offers 58 indoor unit models. Each of these indoor unit models is designed to be used with up to 15 other indoor units, which need not be the same models, in combination with a single outdoor unit. Thus, for each of the CITY MULTI VRFZ outdoor coils, there are well over 1,000,000 combinations of indoor coils that can be matched up in a system configuration.

The current test procedure provides no direction for determining what combination or combinations of outdoor and indoor units should be tested in these circumstances. It is not practical to test each possible combination. The test procedure provides no mechanism for sampling component combinations.[8] Thus, the test procedure does not contemplate, and cannot practicably be applied to, the CITY MULTI VRFZ systems consisting of multiple assemblies that are intended to be used in a very large number of different combinations.

2. *The test procedure calls for testing ''matched assemblies,'' but CITY MULTI systems are designed to be used in zoning systems where the capacity of the indoor units does not match capacity of the outdoor unit.*

Indoor and outdoor coils in split systems are typically balanced, that is, the capacity of the outdoor coil is equivalent to the capacity of the indoor coil. The test procedure's application to ''matched assemblies'' contemplates such a balance between indoor and outdoor coil capacity. With the CITY MULTI VRFZ Systems, however, the sum of the capacity of the indoor units connected into the system can be as much as 150% of the capacity of the outdoor coil. Such unbalanced combinations of CITY MULTI indoor and outdoor units are permitted by the zoning characteristics of the system, the use of electronic expansion valves to precisely control refrigerant flow to each indoor coil, and the system intelligence for overall system control. The test procedure designed for matched assemblies does not contemplate or address testing for substantially unbalanced zoning systems such as the CITY MULTI.[9]

3. *The current test procedure does not accommodate infinite variability in compressor speed.*

The compressors in typical commercial package air conditioners and heat pumps are on/off systems, with the compressor

[3] 65 FR 48828 (Aug. 9, 2000).

[4] The * denotes engineering differences in the models.

[5] *See* 10 CFR 430.27 (2003) (standard for granting waiver from test procedures for consumer products) and 10 CFR 431.29 (2002) (standard for granting waiver from test procedures for electric motors.)

[6] The same language appears in ARI Standard 210/240 3.2 (1994).

[7] An analysis of commercial products from 65,000 Btu/h to 240,000 Btu/h covered by ARI Standard 210/240 and listed in the ARI Unitary Large Equipment (ULE) directory was conducted by MEUS. For the products in the Split System Heat Pump (HRCU–A–CB) category, 172 of 173 (over 99%) of the systems listed have one indoor coil, and the other system has two indoor coils. For the products in the Condensing Unit Coil and Blower (RCU-A-CB) category, 649 of 653 (over 99%) of the listed systems have one indoor coil and the other four systems have two indoor coils. None of the listed products in these categories have more than 2 indoor coils. By contrast, the City Multi VRFZ systems will have typically 4 to 8 indoor coils, can be configured with as many as 16 indoor coils.

[8] Any modification of test procedures to provide for testing of a sample of configurations would need to assure that the test results produced would fairly represent energy used in other component combinations used by customers.

[9] Note that the ARI test procedure is also ambiguous about how to determine the capacity of such unbalanced VRFZ systems.

operating only at one speed. Thus, the test procedure's baseline test is conducted at full load. The test procedure includes a crude mechanism designed to measure energy use in the cooling mode at specified part-loads. ARI 210/240 5.2 (1989) provides that ''[s]ystems which are capable of capacity reduction shall be rated at 100% and at each step of capacity reduction provided by the refrigeration system(s) as published by the manufacturer. These rating points shall be used to calculate the [integrated part load value, or] IPLV.''[10] The CITY MULTI VRFZ Systems, by contrast, have variable frequency inverter driven scroll compressors, and therefore have nearly infinite steps of capacity. For this reason, the test procedure's ''step'' analysis of capacity reduction cannot be practicably applied to the CITY MULTI VRFZ compressors.

In addition, the existing test standards do not provide a test method for integrated part load value during heating operation of heat pumps. The CITY MULTI heat pump products' part load capability in heating mode is not accounted for in any way in the test procedure.

In order to provide accurate data for product comparisons by consumers, it is critical that the efficiency rating of a system be derived at its normal operating state. While other system compressors run at full load as their normal state, the CITY MULTI VRFZ Systems run at part load as their normal state. EER measurements at full load are not representative of typical customer usage of the CITY MULTI product. Thus, the problems with the IPLV methodology described above are particularly problematic with respect to the CITY MULTI VRFZ Systems.

4. *The current test procedure does not account for the capability of simultaneous heating and cooling.*

The CITY MULTI VRFZ R2 products are the only 2-pipe simultaneous heating and cooling systems available in the United States at the current time. These simultaneous heating and cooling systems achieve significant energy efficiency because they transfer heat recovered from one zone and discharge it into another zone needing heat. The test procedures in ARI 210/240 5.2 (1989) and ARI 210/240 5.2 (1994) do not include any mechanism for testing a multi-split heat pump that can operate with one or more indoor coils cooling while one or more other indoor units are heating.

For all of these reasons, the existing test procedures evaluate the CITY MULTI VRFZ products ''in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.''[11] Thus, this petition for waiver should be granted.

It is not surprising that the existing test procedures do not address the issues listed above, because VRFZ systems like the CITY MULTI were not in distribution in the U.S. when the Energy Policy Act was enacted in 1992, or when the industry standards and test procedures incorporated by reference in the Energy Policy Act were developed.

Without a waiver of the test procedure, MEUS is at a competitive disadvantage in the market. Utilities, customers, and State and local governments expect MEUS to provide energy efficiency ratings that will enable the comparison of HVAC products, the determination of building code compliance, and the calculation of energy savings. The current test procedure, however, cannot be meaningfully applied to CITY MULTI VRFZ systems, for the reasons described above. Moreover, if there is an applicable test procedure for a covered product, section 343(d)(1) of EPCA prohibits a manufacturer from making representations about the energy consumption of the equipment unless the equipment has been tested in accordance with such test procedure and the representation fairly discloses the results of the testing. Therefore, MEUS is handicapped in its ability to provide information on energy consumption to its customers. This is particularly counterproductive for the CITY MULTI VRFZ systems because these systems are specifically designed to deliver energy savings for customers.

No Known Alternative Test Procedures

There are no alternative test procedures known to MEUS that could evaluate these products in a representative manner.[12]

Similar Products

To the best of our knowledge, VRFZ products are also offered in the United States by Samsung Electronics Company, Ltd., Sanyo Fisher (USA) Corp., and Mitsubishi Heavy Industries Climate Control, Inc. Each of the manufacturers has incorporated a different technology to achieve variable refrigerant flow. None of these manufacturers offer a product comparable to the CITY MULTI VRFZ R2 products that offer simultaneous heating and cooling with a 2-pipe system.

We believe that a test procedure could be developed to address appropriately variable refrigerant flow zoning systems, part-load performance by variable speed compressors, and simultaneous heating and cooling operations. Given the differences in technology used by manufacturers of other VRFZ systems, however, it is uncertain whether a test procedure developed for the CITY MULTI VRFZ systems would also appropriately apply to these other manufacturers' products.

Conclusion

MEUS seeks a waiver of current test procedures established in ARI 210/240 (1989). Such a waiver is necessary because the current prescribed test procedures produce materially inaccurate and unrepresentative data for regulatory and consumer information purposes.

MEUS respectfully asks the Department of Energy to grant a waiver from existing test standards until such time as a representative test procedure is developed and adopted for this class of products. MEUS expects to work with ARI through the process of developing appropriate test procedures.

If we can provide further information, or if it would be helpful to discuss any of these matters further, please contact Paul Doppel, Brand Manager, at (678) 376–2923.

Sincerely,

William Rau
President, HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
4505–A Newpoint Place
Lawrenceville, GA 30043

Certificate

I hereby certify that I have this day served the foregoing document upon the following companies known to Mitsubishi Electric & Electronics USA, Inc. to currently market systems in the United States which appear to be similar to the CITY MULTI VRFZ System design:

Samsung Air Conditioning
Samsung Electronics Company, LTD.
2865 Pellissier Pl.
Whittier, CA 90601
Attn: John Miles, Director, Engineering & Technical Support

Sanyo Fisher (USA) Corp.
1165 Allgood Road
Suite 22
Marietta, GA 30062
Attn: Tetsushi Yamashita, Engineering Manager, HVAC

Mitsubishi Heavy Industries Climate Control, Inc.
3030 E. Victoria Street
Racho Dominguez, CA 90221
Attn: Mario B. Santos, Assistant Manager, Service Engineer

Dated this 13th day of June 2003.

William Rau
President, HVAC Advanced Products Division
Mitsubishi Electric & Electronics USA, Inc.
4505–A Newpoint Place
Lawrenceville, GA 30043

[FR Doc. 03–23567 Filed 9–15–03; 8:45 am]
BILLING CODE 6450–01–P

[10] The same language appears in ARI 210/240 5.2 (1994).

[11] 10 CFR 431.29 (2002)(a)(1) (standard for granting waiver from test procedures for electric motors). *See also* 10 CFR 430.27(a)(1) (2002) (standard for granting waiver from test procedures for consumer products).

[12] Although ARI 210/240 has been modified several times since 1989 (the most recent version being ARI 210/240 (2003)), even these revised test procedures do not address the problems identified above.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: EIA is soliciting comments on the proposed new survey Form EIA–913, ''Monthly and Annual Liquefied Natural Gas (LNG) Storage Reports.''

DATES: Comments must be filed by November 17, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Send comments to Ms. Poonum Agrawal. To ensure receipt of the comments by the due date, submission by e-mail to *Poonum.Agrawal@eia.doe.gov* is recommended. Poonum Agrawal may be contacted by telephone at (202) 586–6048 or facsimile at (202) 586–4420; however, submission by e-mail is the preferred medium for correspondence. The mailing address is: Natural Gas Division (Attn: EIA–913 Comments), EI–44, Forrestal Building, U.S. Department of Energy, Washington, DC 20585.

FOR FURTHER INFORMATION: Please visit *http://www.eia.doe.gov/oil_gas/natural_gas/survey_forms/nat_proposed_forms.html* for additional information or copies of the form and instructions. Requests for this information may also be directed to Poonum Agrawal at the contact information listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near- and long-term domestic demands.

EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with EIA. Any comments received help EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the industry. Based on review of the comments and field test results, EIA will seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The purpose of Form EIA–913, ''Monthly and Annual Liquefied Natural Gas (LNG) Storage Report,'' is to collect data on the inventory levels of LNG and operational capacities of active LNG storage facilities in the United States.

Survey respondents would include all operators of facilities that store LNG for baseload, seasonal, and peak demand delivery in the United States, or for delivery to United States customers for these purposes. This includes operators with LNG inventories such as distribution companies, pipeline companies, liquefaction facilities, LNG wholesalers (excluding retailers who sell LNG exclusively for ultimate vehicular fuel use), and marine terminals providing peaking storage services. The survey coverage does not include LNG inventories held by any industrial, residential, commercial, or power generation operations for ultimate consumption. The respondents for Form EIA–913 will comprise operators of approximately 100 LNG storage facilities (the total estimated number of facilities currently active in the United States).

Data would be collected pursuant to the Federal Energy Administration (FEA) Act of 1974, Public Law 93–275. The report will be mandatory under the FEA Act. The data would appear in the EIA publications, *Monthly Energy Review, Natural Gas Annual,* and *Natural Gas Monthly.*

This collection is essential to the mission of the DOE in general and EIA in particular. This request for clearance was necessitated by the increasing role of LNG storage as a source of natural gas supply, especially during periods of peak demand, and the subsequent need to monitor its activity for a better understanding of the U.S. natural gas supply and demand balance. Much like the existing EIA underground natural gas storage survey, the new LNG survey is expected to be widely used by industry analysts and Federal and State agencies to monitor gas markets. Recognizing the importance of LNG storage activities to gas market information, DOE Secretary Spencer Abraham requested on June 26, 2003, that EIA plan a new survey of LNG storage activities to collect better information and achieve better market efficiency.

EIA may eventually consider the value of a weekly sample survey of LNG inventories after the monthly survey is operating in a stable manner and if evidence indicates that greater timeliness of data would enhance understanding of the overall natural gas supply situation.

Respondents would be expected to complete the EIA–913 Annual Schedule at the start of the survey and subsequently once a year and whenever a new facility begins operation or a change in operator or storage capacity occurs. The completed EIA–913 Monthly Schedule would be due 20 days after the conclusion of the report month. Data would be submitted by e-mail, facsimile, or the secure file transfer (SFT) system to EIA. Please note that email and facsimile are not secure methods of file transfer. SFT is based on the secure hypertext transfer protocol (HTTPS), an industry standard method to send information over the web using a secure, encrypted process. All information is protected by 128-bit encryption to maintain the privacy and confidentiality of transmitted data.

Data elements for the proposed survey are listed below. Please refer to *http://www.eia.doe.gov/oil_gas/natural_gas/survey_forms/nat_proposed_forms.html* for a copy of the proposed form and instructions.

Monthly Schedule

1. Respondent identification data.
2. Monthly LNG storage data:
a. Facility name.
b. Facility location.
c. LNG storage additions, and Btu heat content of additions.
d. LNG withdrawals, and Btu heat content of withdrawals.
e. End-of-period LNG inventories, and Btu heat content of inventories.
f. Peak day withdrawals.
g. Peak day.
3. Comments.

Annual Schedule

1. Respondent identification data.
2. Annual facility characteristics:
a. Storage facility name.
b. Location.
c. Type of operation (distribution company, pipeline company, marine terminal with peaking service, LNG wholesaler, liquefaction facility, other).
d. Storage facility capacity.
e. Liquefaction capacity.
f. Trailer unloading capacity.
g. Vaporization capacity.
h. Trailer loading capacity.
i. Change in capacity.
3. Comments.

EIA is proposing to treat the information collected on Form EIA–913 as confidential in accordance with existing EIA confidentiality provisions. Under these provisions, survey information is treated as confidential and is not publicly released. However, upon request for official uses the information may be shared with another component of the Department of Energy,

any Committee of Congress, the General Accounting Office, and other Federal agencies authorized by law to receive such information. A court of competent jurisdiction may obtain the information in response to an order.

EIA will publish monthly inventory estimates and net withdrawals estimates (withdrawals minus additions) as well as annual information on LNG storage capacities for the United States and several multi-state regions to the extent that confidentiality for company-specific information allows. In order to preserve the confidentiality of company-specific information, EIA Standard 2002–22, ''Non-disclosure of Company Identifiable Data in Aggregate Cells,'' would be used. A copy of this standard may be obtained at *http://www.eia.doe.gov/smg/standard.pdf.* Under these rules, EIA–913 information would be published at an aggregate multi-state level based on the current EIA underground storage regions. Such primary suppression of confidential data may result in further complementary suppression of data in publications in which this data may be incorporated. Thus, confidentiality of company-specific information would be maintained at the loss of geographic detail. However this rule could be waived if the affected respondents agree.

The operators of LNG storage facilities will be asked to submit monthly reports of inventories, additions and withdrawals, and annual reports of facility characteristics. EIA will publish monthly inventory estimates and net withdrawals estimates (withdrawals minus additions) for the United States and several multi-state regions to the extent that confidentiality for company-specific information allows. These regions are chosen based on the current EIA underground natural gas storage regions, which reflect the major natural gas production and distribution regions, familiarity to both respondents and data users and current EIA disclosure restrictions. The following is an example of the monthly data format and regions:

Region	Total storage capacity	Inventory	Percent change from same period last year	Net withdrawals
East				
New England and Mid-Atlantic				
Other				
West & Producing				
USA Total				

Similarly annual summaries of facility characteristics will be provided at the United States level and the same multi-state regions to the extent that confidentiality for company-specific information allows.

As an alternative to collecting the data under the confidentiality arrangements outlined above, EIA has the option of collecting the Form EIA–913 information as confidential in accordance with the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) (Title 5 of Pub. L. 107–347). If the Form EIA–913 information is collected under CIPSEA, the information could not be disclosed by EIA in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent. As defined in CIPSEA, the term ''statistical purpose'' (A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and (B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A).

The requirement that information collected under CIPSEA be used exclusively for statistical purposes has both advantages and disadvantages. A primary advantage of collecting information in accordance with CIPSEA is that the information could not be used for any non-statistical purpose including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent. A primary disadvantage in collecting information in accordance with CIPSEA is that, without a respondent's informed consent, the information could not be shared with other Federal non-EIA personnel for non-statistical purposes in the event of a major energy supply situation. This restriction on sharing could severely hamper any timely U.S. government actions in the event of significant supply problems.

II. Current Actions

EIA will be requesting approval from the Office of Management and Budget (OMB) to conduct a monthly and annual information collection program via Form EIA–913, ''Monthly and Annual Liquefied Natural Gas (LNG) Storage Report.'' The respondents for the EIA–913 will comprise operators of approximately 100 LNG storage facilities (the total estimated number of facilities currently active in the United States).

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

1. General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

C. Should the proposed collection of information be conducted under EIA's existing confidentiality provisions, or under the provisions of the Confidential Information and Statistical Efficiency Act of 2002?

2. As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions or definitions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 1 hour for the Monthly Schedule and 3 hours for the Annual Schedule. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the survey form. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

H. Do you consider the EIA–913 information (additions, withdrawals, inventory, and facility characteristics) to be sensitive proprietary company information that should be treated as confidential? If so and the EIA–913 survey was conducted under CIPSEA, would your company sign an informed consent agreement for release of its EIA–913 information to other Federal agencies for use in preparing for and/or responding to defined emergency situations such as terrorist attacks, regional pipeline breaks, or LNG shipping disruptions? Any Federal agency with access to EIA–913 information would be required to sign a document agreeing to maintain the confidentiality of the information.

3. As a Potential User of the Information to be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be reported?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternative sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, September 10, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–23568 Filed 9–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–581–000]

ANR Pipeline Company; Notice of Revised Tariff Filing

September 10, 2003.

Take notice that on August 28, 2003, ANR Pipeline Company, (ANR) tendered for filing tendered as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing, with an effective date of October 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. 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 ''eLibrary''. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 15, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–23611 Filed 9–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket RP03–598–000]

Cotton Valley Compression, L.L.C.; Notice of Second Compressor Change Tariff, Rate, and Environmental Filing

September 10, 2003.

Take notice that on August 28, 2003, Cotton Valley Compression, L.L.C. (Cotton Valley), tendered for filing in Docket Nos. CP99–541–004 and RP03–598–000 a report

(1) describing the SECOND change of leased compressor units, (2) recomputing the stated rates to reflect the cost and capacity impacts of that compressor change, (3) replacing specific tariff sheets to reflect those revised rates and increased available capacity, and (4) satisfying environmental conditions attached to its original certificate of public convenience and necessity issued in 2000. 90 FERC & 61,206. Cotton Valley states that in that certificate besides authorizing Cotton Valley's 1,200 horsepower of installed leased compression with a capacity of 13,100 Dth/d, the Commission authorized it to operate leased compressors up to 3,000 horsepower with a capacity of up to 31,000 Dth/d, without further certification or abandonment for changes up or down within this upper level, subject to certain conditions.

Cotton Valley states that the following revised tariff sheets are being filed, with an effective date of September 29, 2003:

Second Revised Sheet No. 2 superceding First Revised Sheet No. 2
Second Revised Sheet No. 4 superceding First Revised Sheet No. 4

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

must file a motion to intervene. 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 ''eLibrary''. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: September 15, 2003.

Linda Mitry,

Acting Secretary

[FR Doc. 03–23612 Filed 9–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

[Docket No. RP00–336–018]El Paso Natural Gas Company; Notice of Compliance Filing

Federal Energy Regulatory Commission

September 10, 2003.

Take notice that on August 29, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Twentieth Revised Sheet No. 1 and Original Sheet No. 2, with an effective date of October 1, 2003.

El Paso states that the transportation service agreements (TSAs) listed on the tariff sheets reflect the conversion of its former full requirements shippers to contract demand shippers in accordance with Commission Orders issued in the capacity allocation proceeding in this docket. El Paso states that the TSAs are being submitted for Commission review and information and have been listed on the tendered tariff sheet as potentially non-conforming agreements.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 eLibrary (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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: September 15, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–23610 Filed 9–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2086]

Southern California Edison Company; Notice of Authorization for Continued Project Operation

September 10, 2003.

On August 30, 2001, Southern California Edison Company, licensee for the Vermilion Valley Project No. 2086, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder Project No. 2086 is located on Mono Creek in Fresno County, California.

The license for Project No. 2086 was issued for a period ending August 31, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2086 is issued to Southern California Edison Company for a period effective September 1, 2003 through August 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Southern California Edison Company is authorized to continue operation of the Vermilion Valley Project No. 2086 until such time as the Commission acts on its application for subsequent license.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–23609 Filed 9–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–121–001, et al.]

Hardee Power Partners, Limited., et al.; Electric Rate and Corporate Filings

September 4, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Hardee Power Partners, Limited, Invenergy Investment Company LLC, GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., Hardee GP LLC, Hardee LP LLC

[Docket No. EC03–121–001]

Take notice that on August 29, 2003, Hardee Power Partners, Limited (Hardee Power), Invenergy Investment Company LLC, GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., Hardee GP LLC and Hardee LP LLC (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) a supplement to their application filed pursuant to section 203 of the Federal Power Act on August 8, 2003, for authorization of the transfer of

100% of the partnership interests in Hardee Power to Hardee GP LLC and Hardee LP LLC (the Acquirers) so that upon consummation of the proposed transaction, the Acquirers will own 100% of Hardee Power. Applicants request confidential treatment for the documents contained in Confidential Exhibit I and Confidential Attachment 1 of the supplement.

Comment Date: September 15, 2003.

2. Wisconsin Power and Light Company

[Docket No. EC03–133–000]

Take notice that on September 2, 2003, Wisconsin Power and Light Company tendered for filing an application for authorization under section 203 of the Federal Power Act, to sell certain substation equipment to the City of Wisconsin Rapids Water Works and Lighting Commission.

Comment Date: September 23, 2003.

3. Allegheny Energy Supply Company, LLC

[Docket No. ER00–814–002]

Take notice that on August 29, 2003, Allegheny Energy Supply Company, LLC (AE Supply) tendered for filing, a change in status under AE Supply's market-based rate authority to reflect the commercial operation of three new 180 MW generating units located in Springdale, Pennsylvania. *Comment Date:* September 19, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–986–001]

Take notice that on August 29, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing an amendment to its June 27, 2003 filing in Docket No. ER03–986–000 in compliance with the Commission's deficiency letter request dated August 14, 2003.

The Midwest ISO states it has served copies of its filing on all affected customers. Midwest ISO also states that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: September 19, 2003.

5. Sierra Pacific Power Company

[Docket No. ER03–1264–000]

Take notice that on August 29, 2003, Sierra Pacific Power Company (Sierra Pacific) tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of Service Agreement No. 107, Interconnection and Operation Agreement between Sierra Pacific Power Company and Duke Energy Washoe, LLC. Sierra Pacific has requested an effective date for the cancellation of July 30, 2003.

Sierra states that this Notice of Cancellation is filed pursuant to the terms, and finalization of adjustments, appropriate to Service Agreement No. 107. Sierra also states that copies of the filing were served upon Duke Energy Washoe, LLC, and the Public Utilities Commission of Nevada.

Comment Date: September 19, 2003.

6. Pelican Energy Management Inc.

[Docket No. ER03–1265–000]

Take notice that on August 29, 2003, Pelican Energy Management Inc. (Pelican Energy) tendered for filing a Notice of Cancellation of its market-based rate tariff, Pelican Energy Management Inc., Rate Schedule FERC No. 1. Pelican Energy states that this authorization was issued to them on June 22, 1998, in Docket No. ER98–3084–000. Pelican Energy states that it has never entered into any power sales or power purchase agreements or transactions pursuant to the tariff.

Comment Date: September 19, 2003.

7. Burlington Resources Trading Inc.

[Docket No. ER03–1266–000]

Take notice that on August 29, 2003, Burlington Resources Trading Inc. (Burlington Resources) tendered for filing a Notice of Cancellation of its market-based rate tariff, Burling Resources Trading Inc., Rate Schedule FERC No. 1.

Burlington Resources states that its market-based authorization was issued on November 14, 1996, in Docket No. ER96–3112–000. Burlington Resources states that it has never entered into any power sales or power purchase agreements or transactions pursuant to the tariff.

Comment Date: September 19, 2003.

8. Niagara Mohawk Power Corporation, A National Grid Company

[Docket No. ER03–1267–000]

Take notice that on August 29, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.15, a Notice of Cancellation of Rate Schedule No. 138. Niagara Mohawk requests that the Notice of Cancellation be deemed effective as of November 1, 2003.

Niagara Mohawk states it has served copies of the Notice of Cancellation upon the customer receiving service under Rate Schedule No. 138, the Power Authority of the State of New York, as well as upon the New York Independent System Operator and the New York Public Service Commission.

Comment Date: September 19, 2003.

9. Niagara Mohawk Power Corporation, A National Grid Company

[Docket No. ER03-1268–000]

Take notice that on August 29, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.15 (2003), a Notice of Cancellation of Service Agreement No. 139 under Niagara Mohawk's grandfathered Open Access Transmission Tariff, FERC Tariff Original Vol. No. 3. Niagara Mohawk requests that the Notice of Cancellation be deemed effective as of November 1, 2003.

Niagara Mohawk states it has served copies of the Notice of Cancellation upon the customer receiving service under Service Agreement No. 139, Allegheny Electric Cooperative, Inc., and upon the Power Authority of the State of New York, the New York Independent System Operator, and the New York Public Service Commission.

Comment Date: September 19, 2003.

10. Niagara Mohawk Power Corporation, A National Grid Company

[Docket No. ER03–1269–000]

Take notice that on August 29, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR. 35.15, a Notice of Cancellation of Rate Schedule No. 190. Niagara Mohawk requests that the Notice of Cancellation be deemed effective as of November 1, 2003.

Niagara Mohawk states it has served copies of the Notice of Cancellation upon the customer receiving service under Rate Schedule No. 190, the Village of Bergen, New York, as well as upon the New York Independent System Operator and the New York Public Service Commission.

Comment Date: September 19, 2003.

11. Ameren Services Company

[Docket No. ER03–1270–000]

Take notice that on August 29, 2003, Ameren Services Company (Ameren) filed an unexecuted Network Integration Transmission Service (NITS) Agreement and unexecuted Network Operating Agreement (NOA) between Ameren and Soyland Power Cooperative, Inc. (Soyland) with the Commission. Ameren states that the filing proposes modifications to the unexecuted NITS Agreement and NOA accepted by the Commission in Docket No. ER03–464. Ameren seeks an effective date of September 1, 2003.

Ameren states it has served a copy of this filing on Soyland.

Comment Date: September 19, 2003.

12. Aquila, Inc.

[Docket No. ER03–1271–000]

Take notice that on August 29, 2003, Aquila, Inc. d/b/a/ Aquila Networks " MPS (Aquila-MPS) submitted for filing a Generator Balancing Service Tariff and associated pro forma service agreement pursuant to 18 CFR 35.12. Aquila states that pursuant to the GBS Tariff, Aquila-MPS will offer generator balancing service to entities which either own, control, or schedule the output for an independent generating facility interconnected with the transmission system of Aquila-MPS to account for unintentional differences between the scheduled generation and the actual generation associated with each independent generation facility. Aquila has requested that the initial tariff be made effective as of November 1, 2003.

Comment Date: September 19, 2003.

13. Entergy Services, Inc.

[Docket No. ER03–1272–000]

Take notice that on August 29, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, Entergy) filed proposed revisions to the Entergy Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume No. 3, designed to implement an Available Flowgate Capability process for evaluating short-term transmission service requests. Entergy requests an effective date of April 1, 2004.

Comment Date: September 19, 2003.

14. Entergy Services, Inc.

[Docket No. ER03–1273–000]

Take notice that on August 29, 2003, Entergy Services, Inc., on behalf of Entergy New Orleans, Inc. (Entergy New Orleans), tendered for filing of a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy New Orleans and Duke Energy Orleans, LLC.

Comment Date: September 19, 2003.

15. Boston Edison Company

[Docket No. ER03–1274–000]

Take notice that on August 29, 2003, Boston Edison Company (BECo), tendered for filing pursuant to Commission Order No. 618 and Section 205 of the Federal Power Act (FPA) proposed changes in its transmission plant per book depreciation rates. BECo states that it proposes to make the depreciation changes effective on its books as of November 1, 2003, which is the requested effective date for this filing. BECo also states that if the Commission elects to suspend the filing for one-day, BECo requests an October 31, 2003 effective date so that the depreciation rate changes would be reflected on its books as of November 1, 2003.

BECo states that copies of the filing were served upon the public utility's jurisdictional customers, and the Massachusetts Department of Telecommunications and Energy.

Comment Date: September 19, 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, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23608 Filed 9–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–132–000, et al.]

Michigan Transco Holdings, Limited Partnership, *et al.*; Electric Rate and Corporate Filings

September 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Michigan Transco Holdings, Limited Partnership, Michigan Electric Transmission Company, LLC, SFG V–A INC., GPSF–F INC., Evercore METC Investment Inc., Evercore METC Coinvestment Inc., Macquarie Transmission Michigan Inc., NA Capital Holdings Inc., Mich 1400 Corp.

[Docket No. EC03–132–000]

Take notice that on September 2, 2003, Michigan Transco Holdings, Limited Partnership (Michigan Transco Holdings), Michigan Electric Transmission Company, LC (METC), SFG V–A INC. (SFG V–A), GPSF–F INC. (GPSF–F), Evercore METC Investment Inc. and Evercore METC Coinvestment Inc. (the Evercore Investors), Macquarie Transmission Michigan Inc. (MTM), NA Capital Holdings Inc. (NA Holdings) and Mich 1400 Corp. (Mich 1400) (collectively referred to as Applicants), filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act and 18 CFR part 33 for authorization of any indirect disposition of the jurisdictional facilities of METC that may result from a transfer of certain passive limited partnership interests held by SFG V–A in Michigan Transco Holdings, and the transfer of non-voting Series C Convertible Preferred Stock of Trans-Elect, Inc. held by GPSF–F to the Evercore Investors, MTM, NA Holdings and Mich 1400 (the Proposed Transactions).

Comment Date: September 23, 2003.

2. Trent Wind Farm, L.P.

[Docket No. EG03–98–000]

Take notice that on September 3, 2003, Trent Wind Farm, L.P. (Trent

Wind), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Trent Wind states it is a limited partnership, organized under the laws of the State of Delaware, and engaged directly and exclusively in owning and operating the Trent Mesa Wind Project, located between Abilene and Sweetwater, Texas, and selling electric energy at wholesale from the Facility. Trent Wind explains that the Facility consists of 100 wind-powered turbines, with a combined nominal rating of approximately 150 MW, a metering station, and associated transmission interconnection equipment.

Comment Date: September 24, 2003.

3. Rocky Mountain Energy Center, LLC

[Docket No. EG03–99–000]

Take notice that on September 3, 2003, Rocky Mountain Energy Center, LLC (Applicant), c/o Calpine Corporation, filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Applicant states that it will own and operate a nominal 601 MW power generation facility to be located east of the town of Heldon in Weld County, Colorado. Applicant further states that copies of the application were served upon the United States Securities and Exchange Commission and Colorado Public Utilities Commission.

Comment Date: September 24, 2003.

4. First Energy Solutions Corp. v. PJM Interconnection, L.L.C. and Edison Mission Energy v. PJM Interconnection, L.L.C.

[Docket Nos. EL02–112–001 and EL02–120–001]

Take notice that on September 2, 2003, PJM Interconnection, L.L.C. (PJM) filed a letter to comply with the Commission's May 2, 2003 Order in these dockets explaining that the required modification to its Market Monitoring Plan already has been made and accepted in Docket No. ER03–220–000.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: October 2, 2003.

5. BP Energy Company

[Docket No. EL03–60–003]

Take notice that on September 3, 2003, BP Energy Company submitted a letter detailing the disbursement of monies in accordance with the Stipulation and Consent Agreement, pursuant to the Commission's Order dated July 18, 2003, in Docket No. EL03–60–000, 104 FERC ¶ 61,089.

Comment Date: September 23, 2003.

6. The Cincinnati Gas & Electric Company, The Dayton Power & Light Company and Columbus and Southern Ohio Electric Company

[Docket Nos. ER03–1016–001 and EC03–102–001]

Take notice that on September 2, 2003, The Cincinnati Gas & Electric Company (CG&E), The Dayton Power & Light Company (Dayton) and Columbus and Southern Ohio Electric Company (Columbus) jointly submitted responses to the letter requiring additional information issued by the Federal Energy Regulatory Commission in the above-captioned dockets on August 1, 2003.

Comment Date: September 23, 2003.

7. St. Paul Cogeneration, LLC

[Docket No. ER03–1212–002]

Take notice that on September 3, 2003, St. Paul Cogeneration, LLC (St. Paul) filed with the Federal Energy Regulatory Commission revisions to the tariff and code of conduct that were filed on August 14, 2003, with St. Paul's application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: September 12, 2003.

8. New England Power Pool

[Docket No. ER03–1275–000]

Take notice that on August 29, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include BOC Energy Services, Inc. (BOC), Duke Energy Marketing America, L.L.C. (DEMA), and RAM Energy Products, L.L.C. (RAM); and (2) to terminate the memberships of the Massachusetts Energy Buyers Coalition (MEBC), and Mohawk River Funding III, LLC (MRF III). The Participants Committee requests the following effective dates: September 1, 2003 for the commencement of participation in NEPOOL by DEMA and RAM and the termination of MEBC and MRF III; and October 1, 2003 for the commencement of participation in NEPOOL by BOC.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: September 19, 2003.

9. FirstEnergy Service Company

[Docket No. ER03–1276–000]

Take notice that on September 2, 2003, FirstEnergy Service Company (FirstEnergy) tendered for filing the following documents, which FirstEnergy states are intended to assist in implementation of the transfer of control to the Midwest Independent System Operator (the Midwest ISO) of the transmission system which is currently owned and operated by American Transmission Systems, Incorporated (ATSI):

- Revised Open Access Transmission Tariff of ATSI.
- Revised Transmission System Operating Agreement between ATSI and the FirstEnergy Operating Companies.
- Notices of Cancellation of certain Network Integration Transmission Service Agreements and Point-to-Point Transmission Agreements for service over the ATSI transmission system.
- A Notice of Cancellation of the Joint Dispatch Agreement Among FirstEnergy Services Corp., the FirstEnergy Operating Companies, and ATSI.

FirstEnergy has asked for waiver of any applicable requirements in order to make the Agreement effective as of October 1, 2003, or such later date as the Midwest ISO assumes control of the ATSI transmission grid.

Comment Date: September 23, 2003.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1277–000]

Take notice that on August 29, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing Schedule 10–FERC of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in order to recover the Midwest ISO's payments to the Commission for FERC annual charges.

The Midwest ISO has requested waiver of the notice provision of Section 205 of the Federal Power Act in order to accommodate an effective date of September 1, 2003, because the Midwest ISO anticipates billing for service under Schedule 10–FERC on September 1, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as

well as all state commissions within the region. In addition, Midwest ISo states that the filing has beenelectronically posted on its Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO notes that it will provide hard copies to any interested parties upon request.

Comment Date: September 19, 2003.

11. Xcel Energy Services, Inc. and Northern States Power Company

[Docket No. ER03–1278–000]

Take notice that on August 29, 2003, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (NSP) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Generation Interconnection Agreement between NSP and Wilson-West Wind Farm, LLC, Moulton Heights Wind Power Project, LLC, North Ridge Wind Farm, LLC, Viking Wind Farm, LLC, Vandy South Project, LLC, Muncie Power Partners, LLC, and Vindy Power Partners, LLC.

NSP requests the agreement to be accepted for filing effective April 1, 2003, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: September 19, 2003.

12. Ameren Services Company

[Docket No. ER03–1280–000]

Take notice that on September 2, 2003, Ameren Services Company (ASC) tendered for filing unexecuted Service Agreements for Network Integration Transmission Service and a Network Operating Agreement between Ameren Services and Citizens Electric Corporation. Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Citizens Electric Corporation pursuant to Ameren's Open Access Tariff.

Comment Date: September 23, 2003.

13. Smarr EMC

[Docket No. ER03–1281–000]

Take notice that on September 2, 2003, Smarr EMC (Smarr) tendered for filing with the Commission, pursuant to 18 CFR 35.10a, form Service Agreements to govern cost-based power sales under Smarr's Second Revised Rate Schedule FERC No. 1 and Second Revised Rate Schedule FERC No. 2. Smarr states that form Service Agreements incorporated changes to Power Purchase Agreements already on file with the Commission. Therefore, Smarr is also filing a rate schedule amendment pursuant to CFR 35.13.

Smarr states that copies of this filing have been mailed to each of Smarr's Member-Owner/Purchasers. Smarr requests that the form Service Agreements and the associated amendments become effective November 1, 2003.

Comment Date: September 23, 2003]

14. Xcel Energy Services, Inc., Northern States Power Company

[Docket No. ER03–1282–000]

Take notice that on September 2, 2003, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company (NSP) submitted for filing with the Federal Energy Regulatory Commission (Commission) a Generation Interconnection Agreement between NSP and Boeve Wind Farm, LLC.

NSP requests the agreement to be accepted for filing effective August 1, 2003, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on the date requested.

Comment Date: September 23, 2003.

15. Vineland Energy LLC

[Docket No. ER03–1283–000]

Take notice that on September 2, 2003, Vineland Energy LLC (Vineland) petitioned the Federal Energy Regulatory Commission for an order: (1) Accepting for filing Vineland's Rate Schedule FERC No. 1; (2) granting waiver of certain requirements of the Commission's regulations; and (3) granting the blanket approvals normally accorded to sellers permitted to sell at market-based rates. Vineland also requests that the Commission grant waiver of the 60-day prior notice requirement.

Comment Date: September 23, 2003]

16. Blue Canyon Windpower, LLC

[Docket No. ER03–1284–000]

Take notice the on September 2, 2003, Blue Canyon Windpower, LLC (Blue Canyon) tendered for filing pursuant to section 205 of the Federal Power Act 16 U.S.C.824d and 18 CFR 35, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1, authorizing Blue canyon to make sales at market-based rates. Blue Canyon has requested an effective date of October 15, 2003 for its market-based rates.

Blue Canyon states that it intends to sell electric power at wholesale. Blue Canyon states that, in transactions where it sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Blue Canyon's Tariff provides for the sale of energy and capacity at agreed prices.

Comment Date: September 23, 2003.

17. California Independent System Operator Corporation

[Docket No. ER03–1285–000]

Take notice that on September 2, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revision to the Participating Generator Agreement between the ISO and Termoeléctrica De Mexicali S. de R.L. de C.V. (TDM) for acceptance by the Commission. The purpose of the revision is to conform to the ISO's new format for specification of the technical characteristics of a Generating Unit.

The ISO states that this filing has been served on TDM, the California Public Utilities Commission, and all entities that are on the official service list for Docket No. ER03–395–000. The ISO is requesting waiver of the 60-day notice requirement to allow the revision to the Participating Generator Agreement to be made effective September 2, 2003.

Comment Date: September 23, 2003.

18. PSEG Energy Resources & Trade LLC, PSEG Fossil LLC and PSEG Nuclear LLC

[Docket Nos. ES03–53–000, ES03–54–000 and ES03–55–000]

Take notice that on August 29, 2003, PSEG Energy Resources & Trade LLC, PSEG Fossil LLC, and PSEG Nuclear LLC (the PSEG Power Companies) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to enter into joint and several subsidiary guarantees of debt issued by PSEG Power LLC and to enter into short-term intra-corporate funding arrangements.

PSEG Power Companies also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: September 18, 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, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23607 Filed 9–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Technical Conference

September 10, 2003.

On September 24, 2003, staff of the Office of Energy Projects (OEP) will convene a cryogenic design and technical conference concerning Freeport LNG Development, L.P.'s proposed liquefied natural gas (LNG) import terminal and storage facility in Brazoria County, Texas.

The conference will be held on Wednesday, September 24, 2003, at 8:30 a.m. at the Best Western Clute Inn & Suites in Clute, Texas. In view of the nature of security issues to be explored, the conference will not be open to the public. Attendance at the conference will be limited to existing parties to the proceeding and to representatives of interested local, state, and federal agencies. Any person planning to attend the September 24 conference must notify the Office of General Counsel (Joel Arneson) at (202) 502–8562 by noon on September 23, 2003. Participants will be required to sign a non-disclosure statement prior to admission.

Information concerning any changes to the above may be obtained from the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–(866) 208–FERC (208–3372).

Linda Mitry,

Acting Secretary.

[FR Doc. 03–23606 Filed 9–15–03; 8:45 am]

BILLING CODE 6717–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review; State and Local Government Information (EEO–4)

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it is submitting to the Office of Management and Budget (OMB) a request for a one-year extension of the existing collection as described below. A notice that the EEOC would be submitting this request was published in the **Federal Register** on June 20, 2003, allowing for a 60-day public comment period. One comment was received.

DATES: Written comments on this notice must be submitted on or before October 16, 2003.

ADDRESSES: Comments should be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV.* Comments may also be sent to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittal will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4470 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507: (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission'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 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.

One comment was received from a software development company in response to the June 20, 2003 notice. The comment supported the EEOC's request for a one-year extension of the current information collection.

Overview of This Information Collection

Collection Title: State and Local Government Information (EEO–4).

OMB Number: OMB Number 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more full-time employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Number of responses: 10,000.

Reporting Hours: 40,000.

Cost to respondents: $600,000.

Federal Cost: $47,000 (annualized).

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by

the EEOC. Accordingly, the EEOC has issued regulations set forth in Title 29, chapter XIV, subpart 1, § 1602.30. State and local governments with 100 or more full-time employees have been required to submit EEO–4 reports since 1973 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by EEOC to investigate charges of employment discrimination against state and local governments and to provide information on the employment status of minorities and women. The data are shared with several other Federal government agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO–4 survey is 5,000 state and local governments. The estimated number of responses per respondent is approximately two (2) reports. The annual number of responses is approximately 10,000 reports and the total annual burden is 40,000 hours. In order to help reduce survey burden, respondents are encouraged to report data on electronic media as much as possible.

Dated: September 8, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–23518 Filed 9–15–03; 8:45 am]

BILLING CODE 6570–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Science and Technology Council; Committee on Science; Subcommittee on Research Business Models

ACTION: Notice of open meetings.

SUMMARY: This notice announces four workshops sponsored by the National Science and Technology Council / Committee on Science / Subcommittee on Research Business Models.

DATES AND ADDRESSES: The Subcommittee will hold three one-day regional workshops:

- Monday, October 27, 2003, 9 a.m. to 3:30 p.m. (PST). Lawrence Berkeley National Laboratory, Building 50 Auditorium; Berkeley, CA 94720.
- Wednesday, November 12, 2003, 9 a.m. to 3:30 p.m. (CST). Coffman Memorial Union, University of Minnesota; 300 Washington Ave. S.E.; Minneapolis, MN 55455.
- Monday, November 17, 2003, 9 a.m. to 3:30 p.m. (EST). The University of North Carolina, Carolina Inn, 211 Pittsboro Street, Chapel Hill, NC, 27516.

The Subcommittee will subsequently hold a two-day agenda setting meeting:

- Tuesday, December 9, 2003, 9 a.m. to 5 p.m. (EST) and Wednesday, December 10, 2003, 9 a.m. to 3:30 p.m. (EST). Jefferson Auditorium, South Building; U.S. Department of Agriculture; 1400 Independence Ave., SW; Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Michael Holland, Office of Science & Technology Policy; 1650 Pennsylvania Avenue; Washington, DC 20502. Telephone: (202) 456–6130. Email: *mholland@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meetings: The three regional workshops will assist the Subcommittee in its review of policies, procedures, and plans relating to the business relationship between federal agencies and research performers. A subsequent two-day meeting in Washington, DC will assess the input from the regional meetings and help prioritize the agenda of the Subcommittee.

The Committee on Science realizes that much has changed about the practice of scientific research over the last several years. The purpose of the Subcommittee on Research Business Models is to advise and assist the Committee on Science and the NSTC on policies, procedures, and plans relating to business models. Our goal is to improve the efficiency, effectiveness and accountability of the Federal research and development enterprise in a manner cognizant of currently available resources. The Subcommittee will:

—Facilitate a strong, coordinated effort across federal agencies to identify and address important policy implications arising from the changing nature of basic and applied research.

—Examine the concomitant influence these changes have had or should have on business models and business practices for the conduct of basic and applied research sponsored by the Federal government and carried out by academic, industrial, and government entities.

—Review the challenges to improved performance and mechanisms for more transparent accountability of the research enterprise.

These workshops are based upon a request for information published August 6, 2003 by OSTP in the **Federal Register** (vol. 68, No. 151, p. 46631; available at *http://www.ostp.gov/html/Request* for Info 03–19935.pdf).

Tentative Agenda Topics: (Agenda topics may change up to the day of the meetings. The most current agendas will be found on the Subcommittee's Internet site at *http://rbm.nih.gov/*). The three regional workshops will have the following structure:

- Welcome and Introduction
- Summary of **Federal Register** comments
- Morning Panel Discussion (see below for themes of each workshop's panels)
- Afternoon Panel Discussion
- Public Comment Period

Each regional workshop will focus on a subset of the questions posed in the August 6, 2003 **Federal Register** request for information (*http://www.ostp.gov/html/Request for Info 03–19935.pdf*) as described below.

Monday, October 27, 2003, Berkeley, CA

The theme of this workshop will be ''Alignment of Funding Mechanisms with Scientific Opportunities.'' Our focus will include the following issues published in the August 6, 2003 **Federal Register** notice (*http://www.ostp.gov/html/Request for Info 03–19935.pdf*): Research support, multidisciplinary/collaborative research, and research Infrastructure.

- Morning Panel–''Does How We Support Research Determine What We Get: Perspectives from the S&E Community.''
- Afternoon Panel–''New Models for Supporting Science & Engineering Research.''
- Information concerning pre-registration, accommodations and directions is available at *http://isswprod.lbl.gov/ConferenceReg/Registration.asp?ID=33.*

Wednesday, November 12, 2003, Minneapolis, MN

The theme of this workshop will be ''Common Practices among Agencies.'' Our focus will include the following issues published in our August 6, 2003 **Federal Register** notice (*http://www.ostp.gov/html/Request for Info 03–19935.pdf*): Inconsistency of policies and practices among Federal agencies, inconsistency of policies and practices among universities, state and institutional requirements, and regulatory requirements.

- Morning Panel–''When Policies and Practices Collide: What Do Feds Ask for?''
- Afternoon Panel–''Post-Collision: What Should Feds Ask for?''

• Information concerning pre-registration, accommodations and directions is available at *http://www.research.umn.edu/conferences/nsf/.*

Monday, November 17, 2003, Chapel Hill, NC

The theme of this workshop will be the ''Appropriate Costs of Research Enterprise—Determination, Recovery, and Accountability.'' Our focus will include the following issues published in the August 6, 2003 **Federal Register** notice (*http://www.ostp.gov/html/Request for Info 03–19935.pdf*): Accountability, information technology, and technology transfer optimization.

• Morning Panel–''IT: Has Technology Made and Can It Make Research Administration More Efficient? How Can Grants.Gov Help the Process?''

• Afternoon Panel–''Compliance Costs: Balancing Requirements with the Public's Interests.''

• Information concerning pre-registration, accommodations and directions is available at *http://research.unc.edu/workshops/.*

Tuesday, December 9, 2003 and Wednesday, December 10, 2003, Washington, DC

The agenda of the Washington meeting will be strongly influenced by public comments submitted in response to the prior **Federal Register** notice and by the input from the three regional workshops. The agenda for this meeting will be available on the Subcommittee's Internet site (*http://rbm.nih.gov/*) after the November 17 workshop has taken place. In addition, we plan a satellite broadcast of parts of the Washington meeting. We will identify these broadcast segments in the posted agenda.

Public Participation: Each announced meeting is open to the public. Each workshop allots 90 minutes for public comments from the floor. *Please submit your request to make oral statements to nstc_rbm@ostp.eop.gov (e-mail) or contact Michael Holland at 202–456–6130 (telephone).* You must make your request for an oral statement at least 5 business days prior to the meeting. We will schedule oral statements during each of the public comment periods in the order in which they are received. The Subcommittee strongly encourages all those scheduled during the public comment periods to file a written copy of their statement via email to *nstc_rbm@ostp.eop.gov.* You may submit your oral statement in advance or up to five (5) business days after a workshop. We request that this written statement be limited to three pages. Public comment will follow the 3-minute rule.

Meeting Summaries: Summaries of each regional workshop and the Washington meeting will be available on the Subcommittee's Internet site (*http://rbm.nih.gov/*) for public review and copying within 45 days of each meeting.

Authority

The National Science and Technology Council (NSTC) was established under Executive Order 12881 on November 23, 1993. The Committee on Science is chartered under the NSTC. The purpose of the Committee on Science is to advise and assist the NSTC, with emphasis on those federally supported efforts that develop new knowledge in the sciences, mathematics, and engineering.

Kathie L. Olsen,

Associate Director and Co-chair, Committee on Science.

[FR Doc. 03–23573 Filed 9–15–03; 8:45 am]

BILLING CODE 3170–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Science and Technology Council; Committee on Science; Subcommittee on Research Business Models

ACTION: Notice of an extension of the public comment period.

SUMMARY: The National Science and Technology Council/Committee on Science/Subcommittee on Research Business Models published a document in the **Federal Register** on August 6, 2003 requesting data and specific examples related to its review of policies, procedures, and plans affecting the business relationship between federal agencies and research performers. The Subcommittee, by undertaking this review, seeks to improve the performance and management of federally sponsored basic and applied scientific and engineering research. Due to technical problems with the e-mail address established to receive these comments, the Subcommittee on Research Business Models is extending the public comment period from September 22, 2003 to October 6, 2003 and encouraging anyone who submitted comments electronically before September 4, 2003 to resubmit their comments.

DATES: Submit comments on or before October 6, 2003.

ADDRESSES: Due to potential delays in OSTP's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments sent via surface mail will be received before the comment closing date.

Electronic comments may be submitted to: *nstc_rbm@ostp.eop.gov.* Please include in the subject line the words ''NSTC Research Business Models Comments.'' Please put the full body of your comments in the text of the electronic message and as an attachment. Be certain to include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

Comments may be mailed to Michael J. Holland; Office of Science & Technology Policy; 1650 Pennsylvania Ave, NW., Washington, DC 20502. But again, we strongly encourage respondents to submit comments electronically.

FOR FURTHER INFORMATION CONTACT: Michael Holland, Office of Science & Technology Policy; 1650 Pennsylvania Avenue; Washington, DC 20502. Telephone: (202) 456–6130. E-mail: *mholland@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: On August 6, 2003 (68 FR 46631), OSTP announced it was seeking data and specific examples relating to policies, procedures, and plans relating to the business relationship between federal agencies and research performers. During the public comment period, we discovered that the e-mail address established to receive the comments was neither accepting electronic submissions nor responding to electronic submissions with a message stating that incoming e-mails were refused.

All problems with the e-mail account have now been resolved. The Subcommittee is extending the deadline for public comment to no later than October 6, 2003. We encourage anyone who submitted comments electronically prior to September 4, 2003 to resubmit their comments. We have received comments submitted electronically after September 4, 2003.

Authority

The National Science and Technology Council (NSTC) was established under Executive Order 12881 on November 23, 1993. The Committee on Science is chartered under the NSTC. The purpose of the Committee on Science is to advise and assist the NSTC, with emphasis on those federally supported efforts that

develop new knowledge in the sciences, mathematics, and engineering.

Clifford J. Gabriel,

Deputy to the Associate Director.

[FR Doc. 03–23572 Filed 9–15–03; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2779]

Bureau Seeks Comment on AT&T Corporation's Petition for Preemption, Pursuant to the Communications Act and Common Law Principles, of South Carolina Statutes That Established an Interim LEC Fund

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau seeks comment on AT&T's Petition. On October 7, 2002, AT&T Corporation (AT&T) filed with the Commission a petition seeking preemption of the South Carolina statutes and administrative procedures that established the Interim Local Exchange Carrier Fund.

DATES: Submit comments on or before November 17, 2003, and reply comments on or before December 15, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, Room TW–B204. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Vickie Byrd, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released September 4, 2003. On October 7, 2002, AT&T Corporation (AT&T) filed with the Commission a petition seeking preemption of the South Carolina statutes and administrative procedures that established the Interim Local Exchange Carrier (LEC) Fund. According to AT&T, the Interim LEC Fund, which began operating in 1997, provides payments to incumbent LECs in return for decreasing their intrastate access charges. Pursuant to section 58–9–280 of the South Carolina Code Annotated, entities receiving an access or interconnection rate reduction from the LECs are required to contribute to the Interim LEC Fund. AT&T alleges that, since long distance providers, such as AT&T, pay a majority of the access charges, long distance providers are responsible for funding almost all of the Interim LEC Fund. AT&T contends that the Interim LEC Fund violates section 253(a) of the Communications Act of 1934, as amended (Act) because it discriminates against: (1) New entrants by limiting their ability to compete with the incumbent LECs receiving support from the Fund and (2) long distance providers by requiring only those providers to contribute to the Fund. AT&T also argues that the Fund does not qualify for preemption protection under section 253(b) of the Act because the Fund is not competitively neutral and not consistent with the requirements for federal universal service programs set forth in section 254 of the Act. Accordingly, AT&T asks the Commission to preempt South Carolina's Interim LEC Fund. The Wireline Competition Bureau seeks comment on the AT&T Petition.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules interested parties may file comments on or before November 17, 2003, and reply comments on or before December 15, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–23544 Filed 9–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:05 a.m. on Thursday, September 11, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider

matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John D. Hawke, Jr. (Comptroller of the Currency), concurred in by Vice Chairman John M. Reich and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 11, 2003.

Federal Deposit Insurance Corporation

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–23666 Filed 9–12–03; 9:14 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 03–10]

Puerto Rico Freight Systems, Inc. v. R & S Trading, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by Puerto Rico Freight Systems, Inc. (''Complainant''), against R & S Trading Inc. (''Respondent''). Complainant contends that Respondent violated the agreement filing provisions of section 5, the tariff publication provisions of section 8, and prohibitions against discriminatory behavior under section 10 of the Shipping Act of 1984, 46 U.S.C. app. §§ 1704, 1707, and 1709. Complainant also requests that the Commission reopen Docket No. 95–03, *Puerto Rico Freight Systems, Inc.* v. *R & S Trading and J.C. Trading* (''Docket No. 95–03'') to determine R & S Trading's conduct and liability. Complainant seeks an order finding Respondent to have violated the sections cited above, directing Respondent to cease and desist, and awarding reparations for the unlawful conduct in an amount ''in excess of $25,000, with interest and counsel's fees.''

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 7, 2004, and the final decision of the Commission shall be issued by January 5, 2005.

Bryant L. Van Brakle,

Secretary.

[FR Doc. 03–23557 Filed 9–15–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 03–09]

Puerto Rico Freight Systems, Inc. v. PR Logistics Corp.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed by Puerto Rico Freight Systems, Inc. (''Complainant''), against PR Logistics Corp. (''Respondent''). Complainant contends that Respondent violated the agreement filing provisions of section 5, the tariff publication provisions of section 8, and prohibitions against discriminatory behavior under section 10 of the Shipping Act of 1984, 46 U.S.C. app. §§ 1704, 1707, and 1709. Complainant seeks an order finding Respondent to have violated the sections cited above, directing Respondent to cease and desist, and awarding reparations for the unlawful conduct in an amount ''in excess of $25,000, with interest and counsel's fees.''

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 7, 2004, and the final decision of the Commission shall be issued by January 5, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–23558 Filed 9–15–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Fidelity & Trust Financial Corporation, Chevy Chase, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Fidelity & Trust Bank, Bethesda, Maryland (in organization).

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Country Bancshares, Inc., Jamesport, Missouri; to acquire up to 14.9 percent of the voting shares of Liberty First Bancshares, Inc., Liberty, Missouri, and thereby indirectly acquire voting shares of Liberty First Bank, Liberty, Missouri.

2. Liberty First Bancshares, Inc., Liberty, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Liberty First Bank, Liberty, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Sterling Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of South Texas Capital Group, Inc., San Antonio, Texas, and thereby indirectly acquire voting shares of Plaza Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, September 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–23575 Filed 9–15–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Request for Nominations for the Secretary's Advisory Committee on Xenotransplantation

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), the Department of Health and Human Services (DHHS) is announcing the renewal of the charter for the Secretary's Advisory Committee on Xenotransplantation (SACX) and is soliciting nominations for qualified individuals to serve on the SACX.

DATES: Nomination packages should be submitted to Dr. Mary Groesch, Office of Biotechnology Activities, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892–7985 by October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Groesch, Office of Biotechnology Activities, Office of Science Policy, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892–7985, telephone 301–496–0785, facsimile 301–496–9839, e-mail <*groeschm@od.nih.gov*>. Information about the SACX can also be accessed at <*http://www4.od.nih.gov/oba/Sacx.htm*>.

SUPPLEMENTARY INFORMATION:

Background

In the U.S., clinical xenotransplantation is an experimental procedure that involves the transplantation, implantation, or infusion into a human recipient of either (a) live cells, tissues, or organs from a nonhuman animal source; or (b) human body fluids, cells, tissues or organs that have had ex vivo contact with live nonhuman animal cells, tissues, or organs. Interest in xenotransplantation has been renewed by the continuing, critical shortage of donated human organs and tissues and by advances in immunology and in the biology of organ and tissue rejection.

Xenotransplantation holds potential for the development of new treatments for a wide range of conditions and disorders, including diabetes, Parkinson's disease, intractable pain, and other diseases involving tissue destruction and organ failure. However, xenotransplantation also raises an important public health issue—the recognized (but unquantified) risk of transmitting infectious agents from animal tissues to human recipients of xenotransplantation products, and subsequently to their close contacts and the public at large. Public awareness and understanding of xenotransplantation is important because the infectious disease risks posed by xenotransplantation could extend beyond the individual recipients. In addition to this public health issue, xenotransplantation raises an array of complex scientific, medical, ethical, and social issues. The Secretary, DHHS, established the SACX to provide a forum for the discussion of, and public input on, these and other relevant issues. The Committee was initially chartered in 1999 and has convened for five meetings since February, 2001. An abridged charter is included in this notice to provide an overview of the Committee purpose, function, and structure.

Abridged Committee Charter

Purpose. The Department of Health and Human Services has a vital role in safeguarding public health while fostering the development of promising strategies to treat tissue destruction, organ failure and other public health needs. The Secretary's Advisory Committee on Xenotransplantation considers the full range of complex scientific, medical, social, and ethical issues and the public health concerns raised by xenotransplantation, including ongoing and proposed protocols, and makes recommendations to the Secretary on policy and procedures. The recommendations of the Committee will facilitate DHHS efforts to develop an integrated approach to addressing emerging public health issues in xenotransplantation.

Function. The SACX shall advise the Secretary, through the Assistant Secretary for Health, on all aspects of the scientific development and clinical application of xenotransplantation. The Committee's charge includes the following activities:

- Advise the Department on the current state of knowledge regarding xenotransplantation.
- Be informed about current and proposed xenotransplantation clinical trials in order to identify and discuss the medical, scientific, ethical, legal, and/or socioeconomic issues raised by these clinical trials.
- Advise the Department on the potential for transmission of infectious diseases as a consequence of xenotransplantation.
- Advise the Department on policies relevant to xenotransplantation, including the need for changes to the *PHS Guideline on Infectious Disease Issues in Xenotransplantation*.
- Discuss additional scientific, medical, public health, ethical, legal and socioeconomic issues, including international policies and developments, that are relevant to xenotransplantation.

Structure. The Committee shall consist of 18 voting members, including the Chair, appointed by the Secretary or designee. Members shall be selected by the Secretary, or designee, from authorities knowledgeable in such fields as xenotransplantation, epidemiology, virology, microbiology, infectious diseases, molecular biology, veterinary medicine, immunology, transplantation surgery, public health, applicable law, bioethics, social sciences, psychology, patient advocacy, and animal welfare. Members shall be invited to serve for overlapping four year terms; terms of more than two years are contingent

upon the renewal of the Committee by appropriate action prior to its termination. Members may serve after the expiration of their term until their successors have taken office.

Meetings. Meetings shall be held approximately three times per year at the call of the Chair with the advance approval of a Government official who shall also approve the agenda. Meetings shall be open to the public except as determined otherwise by the Secretary or designee; notice of all meetings shall be provided to the public.

Compensation. Members shall be paid at a rate not to exceed the daily equivalent of the rate in effect for Executive Level IV of the Executive Schedule for each day they are engaged in the performance of their duties as members of the Committee. Members shall receive per diem and travel expenses as authorized by section 5703, Title 5 U.S.C., as amended, for persons employed intermittently in the Government service. Members who are officers or employees of the United States shall not receive compensation for service on the Committee.

Termination Date. Unless renewed by appropriate action prior to its expiration, the Secretary's Advisory Committee on Xenotransplantation shall terminate on July 10, 2005.

Additional information about the SACX, including the complete charter, is available at *http://www4.od.nih.gov/oba/Sacx.htm*.

Nominations

DHHS will consider nominations of all qualified individuals. Committee members will have expertise in fields such as xenotransplantation, epidemiology, virology, microbiology, infectious diseases, molecular biology, veterinary medicine, immunology, transplantation surgery, public health, law, bioethics, social sciences, psychology, patient advocacy, and animal welfare. Individuals may nominate themselves or other individuals, and professional associations and other organizations may nominate individuals. DHHS has a strong interest in ensuring that women, minority groups, and physically challenged individuals are adequately represented on the Committee and, therefore, encourages nominations of qualified candidates from these groups. DHHS also encourages geographic diversity in the composition of the Committee.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.*, what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his or her curriculum vitae; and (3) the name, return address, and daytime telephone number at which the nominator can be contacted. Except for self-nominations, a nomination package should also include a statement by the nominee that he/she is willing to accept an appointment to Committee membership. All nomination information should be provided in a single, complete package within 30 days of the publication of this notice. The nomination letter should bear an original signature; facsimile transmissions or copies cannot be accepted. All nominations for membership should be sent to Dr. Mary Groesch at the address provided above.

DHHS will use the nomination package only for the purpose of considering nominees for appointment to the committee. However, portions of the nomination package may be publicly disclosed to the extent required by law in response to requests under the Freedom of Information Act, (5 U.S.C. 522), regardless of whether the nominee is appointed to the committee.

Dated: September 10, 2003.

Cristina V. Beato,

Acting Assistant Secretary for Health.

[FR Doc. 03–23552 Filed 9–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on September 29, 2003, from 10 a.m. to 5 p.m.

ADDRESSES: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike; Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Dr. Larry E. Fields, Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 701H, Washington, DC 20201; (202) 690–7694.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002, to replace the Chronic Fatigue Syndrome Coordinating Committee. CFSAC was established to advise, consult with, and make recommendations to the Secretary, through the Assistant Secretary for Health, on a broad range of topics including (1) the current state of knowledge and research about the epidemiology and risk factors relating to chronic fatigue syndrome, and identifying potential opportunities in these areas; (2) current and proposed diagnosis and treatment methods for chronic fatigue syndrome; and (3) development and implementation of programs to inform the public, health care professionals, and the biomedical, academic, and research community about chronic fatigue syndrome advances.

This will be the initial meeting of the Committee; the agenda for this meeting is being developed.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Preregistration is required for public comment. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to CFSAC members should submit materials to the Acting Executive Secretary, CFSAC, whose contact information is listed above prior to close of business, September 25, 2003.

This notice is being published less than 15 days in advance of the meeting due to issues pertaining to technical arrangements.

Dated: September 12, 2003.

Larry E. Fields,

Acting Executive Secretary, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 03–23791 Filed 9–15–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: 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 meeting.

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE).

Times and Dates: 8:30 a.m.–4 p.m., November 6, 2003.

8:30 a.m.–12:30 p.m., November 7, 2003.

Place: Doubletree Hotel Atlanta/Buckhead, 3342 Peachtree Road, NE., Atlanta, Georgia 30326, telephone 404/231–1234, fax 404/231–3112.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: The Secretary is authorized by the Public Health Service Act, section 399G, (42 U.S.C. 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 agenda will include: discussions on defining essential services needed for children with FAS and other alcohol-related conditions; strategies for improving access to these services for affected children and families; presentations on success stories of children with FAS that focus on their strengths. Additional agenda items include an update on activities from the National Center on Birth Defects and Developmental Disabilities; an update on the Interagency Coordinating Committee on Fetal Alcohol Syndrome; new research and program updates from CDC and other Federal agencies; working group updates; future topics; and scheduling the next meeting.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 1600 Clifton Road, NE, (E–86), Atlanta, Georgia 30333, telephone 404/498–3923, fax 404/498–3040.

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: September 9, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–23534 Filed 9–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: 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 Committee meeting.

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates:

8:30 am–5 pm, October 15, 2003

8 am–2:30 pm, October 16, 2003

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The Agenda will include discussions on the smallpox civilian program; Department of Defense Smallpox Vaccine Update; report from the smallpox vaccine safety working group; consideration for the timing of revaccination for smallpox; site care for non-health care workers; recommended childhood and adolescent immunization schedule; briefing on IOM report; influenza vaccine recommendation; pneumococcal conjugate vaccine; VFC Vote on Hepatitis B Vaccine; Federal Advisory Stakeholder Engagement Survey Results; working group and Departmental updates.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE, (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

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: September 9, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–23538 Filed 9–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0486]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 14, 2003 (68 FR 25894), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0435. The approval expires on August 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–23560 Filed 9–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0397]

Agency Information Collection Activities; Proposed Collection; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requests for exemption from the food additive listing regulation requirements that are submitted under part 170 (21 CFR part 170).

DATES: Submit written or electronic comments on the collection of information by November 17, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39 (OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the act, (2) it conforms to the terms of a regulation prescribing its use, or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 part per billion (ppb). The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made, (2) detailed information on the conditions of use of the substance, (3) a clear statement of the basis for the request for exemption from regulation as a food additive, (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance, (5) results of a literature search for toxicological data on the substance and its impurities, and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (i.e., food packaging and food processing equipment) or of the articles themselves.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.39	6	1	6	48	288

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual reporting estimate is based on information received from representatives of the food packaging and processing industries and agency records. In the past, FDA has typically received 60 threshold of regulation exemption requests per year. However, it is estimated that up to 90 percent of the requests that would have been previously submitted under § 170.39 will now be submitted under the premarket notification process for food-contact substances established by section 409(h) of the act (OMB control number 0910–0495). The main advantages of the premarket notification process is that notifiers are guaranteed a decision by FDA within 120 days of receipt of an acceptable notification and, once approved, an effective notification is exclusive to the manufacturer or supplier who submitted the request. Because the types of information needed for approval under the premarket notification process for those uses of food-contact articles involving dietary concentrations of 0.5 ppb or less is identical to that required under § 170.39, the burden on industry for premarket notifications will be similar to the burden for requests submitted under the existing threshold of regulation process.

As indicated previously in this document, it is estimated that approximately six requests per year will be submitted under the threshold of regulation exemption process of § 170.39. The threshold of regulation process offers one advantage over the premarket notification process in that the use of a substance exempted by the agency is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (e.g., use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both the agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and FDA would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Division of Dockets Management and on the Internet at *http://www.cfsan.fda.gov*. Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: September 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–23561 Filed 9–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0186]

Guidance for Industry on Use of Material From Deer and Elk in Animal Feed; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance (#158) entitled ''Use of Material From Deer and Elk in Animal Feed.'' This guidance document describes FDA's recommendations regarding the use in all animal feed of all material from deer and elk that are positive for chronic wasting disease (CWD) or are considered at high risk for CWD.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written comments on this guidance document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20855. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written requests for single copies of this guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Burt Pritchett, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0177, e-mail: *bpritche@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 16, 2003 (68 FR 26628), FDA published a notice of availability for a draft guidance entitled ''Use of Material from Deer and Elk in Animal Feed'' giving interested persons until June 16, 2003, to submit comments. FDA considered all comments received.

II. Paperwork Reduction Act of 1995

FDA concludes that this guidance contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Significance of Guidance

This level 1 guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on the topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA periodically will review the comments in the docket and, where appropriate, will amend the guidance. The agency will notify the public any such amendments through a notice in the **Federal Register**.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the final guidance at any time. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain a copy of the final guidance document entitled ''Use of Material From Deer and Elk in Animal Feed'' from the Center for Veterinary Medicine home page at *http://www.fda.gov/cvm*.

Dated: August 29, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–23559 Filed 9–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). The grant applications could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, ZMD1 (07) S Loan Repayment Program Competing Continuation Applications.

Date: September 12, 2003.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Bethesda Marriott, 5151 Pooke Hill Road, Bethesda, MD 20814.

Contact Person: Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892–5465, (301) 594–7784, *watson@ncmhd.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: September 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23520 Filed 9–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: September 17–18, 2003.

Closed: September 17, 2003, 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, neuroscience center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: September 18, 2003, 9 a.m. to 3 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, national Institutes of Health, DHHS, Bethesda, MD 20892–9547, (301) 443–2755.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's Home page: *http://www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: September 5, 2003.

Anna Snouffer, Acting,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23519 Filed 9–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee; MARC Review Subcommittee A.

Date: October 8–10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12B, 45 Center Drive MSC 6200, Bethesda, MD 20892–6200, 301–594–2849, *rm63f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23522 Filed 9–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The granted applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Services Research Review Committee.

Date: October 8–9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23523 Filed 9–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of the Following Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–07, Review of K25s.

Date: September 24, 2003.

Time: 1:15 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–48K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

This notice is being publishes less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–08, Review of R44s.

Date: October 10, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–11, Review of R44s.

Date: October 17, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–13, Review of R44s.

Date: November 20, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Dated: September 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23524 Filed 9–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–2(40); Structure and Function of Vinculin.

Date: September 30–October 1, 2003.

Time: 7:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 2.

Date: October 2–3, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026, *nayakr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychosocial Risk & Disease Prevention.

Date: October 16–17, 2003.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Monaco, 700 F Street, NW., Washington, DC 20001.
Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.
Date: October 20–21, 2003.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Microenvironment.
Date: October 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–4467, *choe@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.
Date: October 20–21, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Cognition and Perception Study Section.
Date: October 20–21, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Adult Psychopathology and Disorders of Aging Study Section.
Date: October 20–21, 2003.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *shirleym@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.
Date: October 21–22, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Helix, 1430 Rhode Island Ave., NW., Washington, DC 20005.
Contact Person: Bahiru Gametchu, DVM, PhD, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, gmetchb@csr.nih.gov.

Name of Committee: Pathophysiological Sciences Integrated Review Group, Alcohol And Toxicology Subcommittee 4.
Date: October 22–23, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham City Center, 1143 New Hampshire Ave., NW., Washington, DC 20037.
Contact Person: Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, shayiqr@csr.nih.gov.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.
Date: October 22–23, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Daniel L. Stassi, PhD, Scientific Review Administrator, IDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, stassid@csr.nih.gov.

Name of Committee: Immunological Sciences Integrated Review Group, Allergy and Immunology Study Section.
Date: October 23–24, 2003.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Hotel, 2401 M Street NW., Washington, DC 20037.
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, edwardss@csr.nih.gov.

Name of Committee: Endocrinology and Reproductive Sciences Integrataed Review Group, Human Embryology and Development Subcommittee 1.
Date: October 23–24, 2003.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurogenesis and Cell Fate Study Section.
Date: October 23–24, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Madison Hotel, 15th & M Street, NW., Washington, DC 20005.
Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Pharmacology Study Section.
Date: October 23–24, 2003.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cogntive Neuroscience Integrated Review Group, Cognitive Nueroscience Study Section.
Date: October 23–24, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Nursing Science: Adults and Older Adults Study Section.
Date: October 23–24, 2003.
Time: 8 am to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.
Contact Person: Gertrude K. McFarland, DNSC, FAAN, Scientific Review

Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov.*

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Metabolism Study Section.

Date: October 23–24, 2003.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514, *jerkinsa@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.

Date: October 23–24, 2003.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.

Date: October 23–24, 2003.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SPIP.

Date: October 23–24, 2003.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunobiology Study Section.

Date: October 23–24, 2003.

Time: 8:30 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: October 23–24, 2003.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Biophysics of Synapses, Channels, and Transporters Study Section.

Date: October 23–24, 2003.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Michael A Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Genetic Sciences Integrated Review Group, Mammalian Genetics Study Section.

Date: October 23–24, 2003.

Time: 9 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Biostatistical Methods and Research Design Study Section.

Date: October 24, 2003.

Time: 8 am to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave., Washington, DC 20005.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: September 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–23521 Filed 9–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule, 42 CFR part 51 (OMB No. 0930–0172—Extension)—These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements. The Act authorized funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or emotional impairment (children/youth) (42 U.S.C. at 10802(4)). However, only entities designated by the governor of each State and six (6) territories (the American Indian Consortium, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands), and the Mayor of the District of Columbia to protect and advocate the

rights of persons with developmental disabilities under Part C of the Developmental Disabilities and Bill of Rights Act (42 U.S.C. 6041 *et seq.*, as amended in 2000) are eligible to receive PAIMI grants (42 U.S.C. at 10802(2)). PAIMI grants are based on a formula prescribed by the Secretary (42 U.S.C. at 10822(a)(1)(A)).

On January 1, each eligible State protection and advocacy (P&A) system is required to prepare and transmit to the Secretary and head of the State Mental Health Agency, in which the system is located, a report describing its activities, accomplishments, and expenditures during the most recently completed fiscal year. Section 10824(a) of the Act requires that the State P&A system's annual reports to the Secretary, shall describe its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI allotments, including:

(A) The number of (PAIMI-eligible) individuals with mental illness served;

(B) A description of the types of activities undertaken;

(C) A description of the types of facilities providing care or treatment to which such activities are undertaken;

(D) A description of the manner in which the activities are initiated;

(E) A description of the accomplishments resulting from such activities;

(F) A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI allotments;

(G) A description of activities conducted by States to protect and advocate such rights;

(H) A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and,

(I) A description of the coordination among such systems, activities and mechanisms;

(J) Specification of the number of systems that are public and nonprofit systems established with PAIMI allotments; and

(K) Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the needs for such activities and services which have not been met by the State P&A systems established under the PAIMI Act. (The PAIMI Rules 42 CFR section 51.32(b) state that P&A systems may place restrictions on case or client acceptance criteria developed as part of its annual PAIMI priorities. However, prospective clients must be informed of any such restrictions at the time they request service).

This summary report must include a separate section, prepared by the PAIMI Advisory Council, that describes the council's activities and its assessment of the operations of the State P&A system (42 U.S.C. 10805(7)). The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows.

42 CFR Citation	Number of respondents	Responses per respondent	Burden per response (Hrs.)	Total annual burden
51.(8)(a)(2) Program Performance Report [1]	57	1	26.0	(1,596)
51.8(8)(a)(8) Advisory Council Report [1]	57	1	10.0	(570)
51.10 Remedial Actions:				
Corrective Action Plan	6	1	8.0	48
Implementation Status Report	6	3	2.0	36
51.23(c) Reports, materials and fiscal data provided to Advisory Council	57	1	1.0	57
51.25(b)(2) Grievance Procedure	57	1	.5	29
Total	126			170

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 9, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–23537 Filed 9–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–34]

Consolidated Delegation of Authority for Community Planning and Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice consolidates and updates delegations of authority from the Secretary to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Grant, Management Division, Office of Community Planning and Development, Room 7232, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410–7000; (202) 708–2087. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice consolidates into one notice the authority delegated by the Secretary to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, and supersedes all prior delegations of authority from the Secretary to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development.

Section A. Authority

Except as provided in Section B, the Secretary of HUD delegates to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development the authority of the Secretary with respect to the programs and matters listed in this Section A. Only the Assistant Secretary for Community Planning and Development is delegated the authority to issue and waive regulations.

1. AIDS Housing Opportunity Act (Pub. L. 101–625, Title VIII, Subtitle D, 104 Stat. 4375, approved November 28,

1990, codified at 42 U.S.C. 12901–12912);

2. Base Closure, the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421, 108 Stat. 4346, approved October 5, 1994, codified at 10 U.S.C. 2687 note);

3. Capacity Building for Community Development and Affordable Housing Grants;

4. Comprehensive Housing Affordability Strategies (CHAS), Title I of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*);

5. Economic Development Initiative grants, as provided for in annual HUD appropriations acts (*e.g.*, Consolidated Appropriations Resolution, Fiscal Year 2003, Pub. L. 108–7, 117 Stat. 11, approved February 20, 2003);

6. Empowerment Zone Program under Title XIII, Subchapter C, Part J of the Omnibus Budget Reconciliation Act (26 U.S.C. 1391 *et seq.*);

7. Enterprise Zone Program under Title VII of the Housing and Community Development Act of 1987 (42 U.S.C. 11501 *et seq.*);

8. The HOME Investment Partnerships Act, Pub. L. 101–625, Title II, 104 Stat. 4079, approved November 28, 1990, codified at 42 U.S.C. 12721 *et seq.*;

9. HOPE for Homeownership of Single-family Housing Program (HOPE 3), Title IV, Subtitle C of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C.12891);

10. The Loan Guarantee Recovery Program under the Church Arson Prevention Act of 1996 (Pub. L. 104–155, 110 Stat. 1392, approved July 9, 1996, 18 U.S.C. 241 note);

11. Section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 42 U.S.C. 9816 note);

12. Neighborhood Initiatives grants specifically designated in annual HUD appropriations acts (*e.g.*, Consolidated Appropriations Resolution, Fiscal Year 2003, Pub. L. 108–7, 117 Stat. 11, approved February 20, 2003);

13. The Rural Housing and Economic Development grants specifically designated originally in the Fiscal Year 1998 HUD Appropriations Act (Pub. L. 105–65, 111 Stat. 1344, approved October 27, 1997), and subsequent annual HUD appropriations acts;

14. Self-Help Housing Opportunity Program (SHOP) under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 110 Stat. 834, approved March 28, 1996, codified at 42 U.S.C. 12805 note);

15. Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*);

16. Title IV and Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*);

17. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601);

18. Youthbuild Program, Title IV, Subtitle D of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12899 *et seq.*);

19. Certain Community Planning and Development programs are no longer authorized for funding but administration of the programs must continue until all Department responsibilities are discharged and finally terminated.

These programs, as of April 2003, include the following:

a. Slum Clearance and Urban Renewal Program under Title I of the Housing Act of 1949 (42 U.S.C. 1450–1468);

b. Area-wide grants, Inequities grants, Disaster grants and the authority to concur in final approval actions regarding Innovative grants under section 107 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 8121);

c. Rental Rehabilitation Program under section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437(o));

d. Section 312 Rehabilitation Loan Program under section 312 of the Housing Act of 1964 (42 U.S.C. 1452(b));

e. Urban Homesteading Program under section 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706(e));

f. Innovative Homeless Initiatives Demonstration Program under the HUD Demonstration Act of 1993 (Pub. L. 103–120, 107 Stat. 1144, approved October 27, 1993, codified at 42 U.S.C. 9816 note).

Section B. Authority Excepted

There is excepted from the authority delegated under Section A:

1. The power to sue and be sued;

2. Under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*):

a. The power to administer the Indian Community Development Block Grant program, the authority for which was delegated to the Assistant Secretary for Public and Indian Housing on March 1, 1994 (59 FR 9764);

b. The power to administer the section 107 programs, the authority for which was delegated to the Assistant Secretary for Policy Development and Research;

c. The power to issue obligations for purchase by the Secretary of the Treasury under section 108(g) of the Housing and Community Development Act (42 U.S.C. 5308); and

d. The power and authority of the Secretary with respect to nondiscrimination under section 109 may be exercised only with the advice of the Assistant Secretary for Fair Housing and Equal Opportunity;

3. Under the HOME Investment Partnerships Act (Pub. L. 101–625, Title II, 104 Stat. 4079, approved November 28, 1990, codified at 42 U.S.C. 12721 *et seq.*), grants to Indian tribes, for which the authority has been delegated to the Assistant Secretary for Public and Indian Housing.

4. Under the section 312 Rehabilitation Loan Program under section 312 of the Housing Act of 1964 (42 U.S.C. 1452(b)), the property disposition and related authority specifically delegated to the Assistant Secretary for Housing;

5. For programs noted in Section A–19 of this delegation, no longer authorized for funding:

a. The power to establish interest rates; and

b. The power to issue notes or obligations for purchase by the Secretary of the Treasury.

Section C. Authority To Redelegate

The Assistant Secretary of Community Planning and Development is authorized to redelegate to employees of the Department any of the authority delegated under Section A, excluding the authority excepted under Section B and excluding the authority to issue or waive rules and regulations.

Section D. Delegations Superseded

This delegation supersedes the following:

1. Delegation of Authority from the Secretary to the Assistant Secretary and Deputy Assistant Secretary for Community Development, published on March 16, 1971 (36 FR 5004);

2. Delegation of Authority from the Secretary to the Assistant Secretary and Deputy Assistant Secretary for Community Planning and Development, published on March 16, 1972 (37 FR 5005);

3. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development, published on March 27, 1973 (38 FR 8011);

4. Delegation of Authority from the Secretary to the Assistant Secretary and the Deputy Assistant Secretary for Community Planning and Development, published on February 5, 1975 (40 FR 5385), August 25, 1975 (40 FR 37074), November 25, 1975 (40 FR 54606), April

12, 1976 (41 FR 15359), and September 8, 1977 (42 FR 45037);

5. Consolidated Delegation of Authority for Community Planning and Development, published on October 25, 1983 (48 FR 49384);

6. Delegation of Authority from the Secretary to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development with respect to the Rental Rehabilitation Program, published on July 27, 1984 (49 FR 30246);

7. Delegation of Authority from the Secretary to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development with respect to the Emergency Shelter Grants Program, published on December 17, 1986 (51 FR 45288);

8. Delegation of Authority from the Secretary to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development with respect to the Emergency Shelter Grants Program, published on September 4, 1987 (52 FR 33793);

9. Delegation of Authority from the Assistant Secretary to the Assistant Secretary for Community Planning and Development with respect to HUD Programs for the Homeless, published on October 2, 1989 (54 FR 40527);

10. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development for the HOME Investment Partnerships (HOME) Program, published on November 4, 1991 (56 FR 56416);

11. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development for the Shelter Plus Care Program, published on March 20, 1992 (57 FR 9731);

12. Delegation of Authority from the Secretary to the Assistant Secretary and Deputy Assistant Secretary for Community Planning and Development for the HOPE for Homeownership of Single Family Homes Program (HOPE 3), published on October 9, 1992 (57 FR 46568);

13. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development for the Review and Approval of Comprehensive Housing Affordability Strategies, published on November 20, 1992 (57 FR 54826);

14. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development for the Youthbuild Program, published on August 31, 1993 (58 FR 45910);

15. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development Concerning the Base Closure Community Redevelopment and Assistance Act of 1994, published on May 22, 1996 (61 FR 25685);

16. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development pursuant to section 11 of the Housing Opportunity Program Extension Act of 1996, published on August 13, 1996 (61 FR 42050);

17. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development for the Loan Guarantee Recovery Fund, published on October 17, 1996 (61 FR 54211);

18. Delegation of Authority from the Secretary to the Assistant Secretary and General Deputy Assistant Secretary for Community Planning and Development with respect to Enterprise Zone Development, published on June 3, 1998 (53 FR 20563); and

19. Delegation of Authority from the Secretary to the Assistant Secretary for Community Planning and Development with respect to Rural Housing and Economic Development Grants, published on May 12, 1999 (64 FR 25512).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 9, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–23513 Filed 9–15–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–35]

Consolidated Delegation of Authority for the Office of Public and Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of authority.

SUMMARY: This notice is a comprehensive delegation of authority for administration of HUD's Public and Indian Housing programs from the Secretary of Housing and Urban Development to the Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4228,Washington, DC 20410–5000; telephone (202) 708–0440. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under this delegation, which supersedes all prior delegations to the Assistant Secretary for Public and Indian Housing, the Secretary delegates to the Assistant Secretary for Public and Indian Housing all powers and authorities with respect to HUD's Public and Indian Housing programs, except for those powers and authorities, which are specifically excepted from this delegation.

Section A. Authority Delegated

The Secretary delegates to the Assistant Secretary for Public and Indian Housing the power and authority of the Secretary to:

1. Administer programs under the jurisdiction of the Secretary that are carried out pursuant to the authority transferred from the Public Housing Administration under section 5(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3534);

2. Administer each program of the Department that is authorized pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), including but not limited to the Public Housing program, Section 8 programs (except the following Section 8 Project-Based programs: New Construction, Substantial Rehabilitation, Loan Management Set-Aside and Property Disposition), the HOPE VI program and predecessor programs that are no longer funded but have ongoing commitments.

3. Administer such other programs for which assistance is provided for or on behalf of public housing agencies or public housing residents.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Authority To Redelegate

The authority delegated in Section A may be redelegated to employees of the Department through written delegations of authority, except for the authority to issue and waive regulations.

Section D. Authority Revoked

All authority previously delegated to the Assistant Secretary for Public and Indian Housing is revoked and is superseded by this delegation of authority.

Section E

This notice of delegation of authority shall be conclusive evidence of the authority of the Assistant Secretary for Public and Indian Housing or a delegate, to execute, in the name of the Secretary,

any instrument or document relinquishing or transferring any right, title, or interest of the Department in real or personal property.

Authority: Section 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: September 9, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–23514 Filed 9–15–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary for Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate an agreement among the Forest Service, Central Utah Water Conservancy District, the Utah Reclamation Mitigation and Conservation Commission, the Duchesne County Water Conservancy District, the Moon Lake Water Users Association, and Department of the Interior to Implement the Uinta Basin Replacement Project, Duchesne County, Utah.

SUMMARY: Public Law 102–575, Central Utah Project Completion Act, Section 203(a) authorized the construction of the Uinta Basin Replacement Project. Responsibilities for the construction and operation of the project are described in four contracts executed by the Department of the Interior and the other parties on November 15, 2001. The purpose of the proposed implementation agreement is to identify the entity or entities responsible for monitoring environmental mitigation, to allocate funds, and to delineate and assign any remaining tasks and obligations (not included in previous agreements). The terms of the implementation agreement are to be publicly negotiated among the Forest Service, Central Utah Water Conservancy District, the Utah Reclamation Mitigation and Conservation Commission, the Duchesne County Water Conservancy District, the Moon Lake Water Users Association, and Department of the Interior.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained by contacting Mr. Wayne Pullan, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, (801) 379–1194, *wpullan@uc.usbr.gov.*

Dated: September 10, 2003.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 03–23543 Filed 9–15–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Approved Recovery Plan for the Great Lakes Piping Plover (*Charadrius melodus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the approved recovery plan for the Great Lakes piping plover (*Charadrius melodus*), a species that is federally listed as endangered under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). This species occurs or may occur on public and private land in Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin, Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Mississippi, and Texas. Actions identified for recovery of the Great Lakes piping plover seek to increase population numbers throughout its range and to protect essential breeding and wintering habitat.

ADDRESSES: This recovery plan is available from the following addresses:

1. Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814 (the fee for the plan varies depending on the number of pages).

2. Field Supervisor, U.S. Fish and Wildlife Service, East Lansing Ecological Services Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823.

3. The World Wide Web at: *http://endangered.fws.gov/RECOVERY/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Mr. Jack Dingledine, East Lansing Ecological Services Field Office (see **ADDRESSES** section No. 2 above), telephone (517) 351–6320. The Fish and Wildlife Reference Service may be reached at (301) 492–6403 or (800) 582–3421. TTY users may contact Mr. Dingledine and the Fish and Wildlife Reference Service through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals or plants is a primary goal of the Service's endangered species program. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for reclassification to threatened status or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Endangered Species Act of 1973, as amended, requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. Information presented during the comment period has been considered in the preparation of the approved recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal agencies and other entities so that they can take these comments into account during the course of implementing recovery actions.

The Great Lakes piping plover, a sand-colored shorebird, was listed as an endangered species under the Act in 1985. It inhabits beaches on the Great Lakes during the breeding season of April through September, and winters on Atlantic and Gulf of Mexico coast beaches. Nesting occurs on wide, sand and cobble beaches with little vegetation and disturbance. In its wintering range, the Great Lakes piping plover roosts and forages along beaches, dunes, sandy and muddy flats of the Atlantic and gulf coasts. Destruction of habitat, disturbance, and increased predation rates due to elevated predator densities in its habitat are described as the main reasons for this species' endangered status and continue to be the primary threats to its recovery. Fifty-one nesting pairs were recorded in 2002, all in Michigan and Wisconsin. Breeding has not occurred outside of Michigan and Wisconsin for over a

decade, although occurrence during migration has been recorded in other Great Lakes States.

The objective of this plan is to provide a framework for the recovery of the Great Lakes piping plover so that protection by the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed, and it will be considered for removal from the list of Endangered and Threatened Wildlife (50 CFR part 17). The Great Lakes piping plover will be considered for reclassification to threatened when the following occurs: (1) The population has increased to at least 150 pairs (300 individuals) for at least 5 consecutive years, with at least 100 breeding pairs (200 individuals) in Michigan and 50 breeding pairs (100 individuals) distributed among sites in other Great Lakes States; (2) 5-year average fecundity is within the range of 1.5–2.0 fledglings each pair, per year, across the breeding distribution, and 10-year projections indicate the population is stable, or continuing to grow, above the recovery goal; (3) protection and long-term maintenance of essential breeding and wintering habitat are ensured, sufficient in quantity, quality and distribution to support the recovery goal of 150 pairs (300 individuals); and (4) genetic diversity within the population is deemed adequate for population persistence and can be maintained over the long-term. It will be considered for delisting when the following are achieved: (1) The reclassification criteria are met, and (2) agreements and funding mechanisms are in place for long-term protection and management activities in essential breeding and wintering habitats.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 21, 2003.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–23535 Filed 9–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Recovery Plan for the Northern Idaho Ground Squirrel (*Spermophilus brunneus brunneus*)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (''we''), announce the availability of the final Recovery Plan for the Northern Idaho Ground Squirrel (Spermophilus brunneus brunneus), a subspecies that is federally listed as threatened. This subspecies is known to exist only in Adams and Valley Counties of western Idaho and numbers about 500 individuals.

ADDRESSES: Copies of the recovery plan are available by written request addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, Idaho 83709 (telephone: 208–378–5243). An electronic version of this recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans*.

FOR FURTHER INFORMATION CONTACT: Rich Howard or Ray Vizgirdas at the above Boise address (telephone: 208–378–5243).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The draft recovery plan for the northern Idaho ground squirrel was available for public comment from July 15, 2002, through September 13, 2002 (67 FR 46440). Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in an appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

The northern Idaho ground squirrel was listed as threatened on April 5, 2000 (65 FR 17779). This subspecies is known to exist only in Adams and Valley Counties of western-central Idaho. The entire range of this subspecies is about 32 by 108 kilometers (20 by 61 miles), and as of 2002, the subspecies existed at 29 of 42 known population sites (colonies). The northern Idaho ground squirrel is known to occur in shallow, dry, rocky meadows usually associated with deeper, well-drained soils and surrounded by ponderosa pine and Douglas-fir forests at elevations of about 915 to 1,650 meters (3,000 to 5,400 feet). The primary threat to this subspecies is habitat loss due to forest encroachment into former suitable meadow habitat. Forest encroachment results in habitat fragmentation, eliminates dispersal corridors, and confines the northern Idaho ground squirrel populations into small, isolated habitat islands that eventually can result in local extirpation.

The objective of this plan is to provide a framework for the recovery of the northern Idaho ground squirrel so that protection by the Act is no longer necessary. Recovery is contingent upon protecting and managing present northern Idaho ground squirrel habitat, modifying adjacent habitats to make them favorable for population increases, and to provide adequate corridors for exchange between populations.

The recovery objectives for the northern Idaho ground squirrel are: (1) At least 10 functioning metapopulations, each with an effective population size that is greater than 500 individuals for 5 consecutive years, throughout the probable historical distribution in Adams and Valley Counties; (2) the area occupied by each potential metapopulation is protected; (3) plans have been completed for the continued ecological management of habitats for all potential metapopulation sites; and (4) a post-delisting monitoring plan covering all potential metapopulation sites has been completed and is ready for implementation.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 1, 2003.

Carolyn A. Bohan,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 03–23536 Filed 9–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Amendments taking effect between the State of Wisconsin and the St. Croix Chippewa Indians of Wisconsin and the Red Cliff Chippewa Indians of Wisconsin.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Amendment to the Tribal-State Compacts for Class III gaming between the State of Wisconsin and the St. Croix Chippewa Indians of Wisconsin and the Red Cliff Chippewa Indians of Wisconsin is deemed approved. By the terms of IGRA, the Amendments to the Compacts are considered approved, but only to the extent that the Amendments are consistent with the provisions of IGRA.

The Amendments expand the scope of gaming activities authorized under the Compact, remove limitations on wager limits, remove limitations on the number of permitted gaming devices, extend the term of the compact to an indefinite term, subject to re-opener clauses, institute an entirely new dispute resolution provision, replace the sovereign immunity provision, and modify the revenue-sharing provision of the Compact.

EFFECTIVE DATE: September 16, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 9, 2003.

Woodrow W. Hopper, Jr.,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–23578 Filed 9–15–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fire Management Plan, Environmental Impact Statement, Grand Canyon National Park, AZ

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for a Fire Management Plan for Grand Canyon National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C), the National Park Service is preparing an Environmental Impact Statement (EIS) for the Fire Management Plan (FMP) for Grand Canyon National Park. This effort will result in a new wildland fire management plan that meets current policies, provides a framework for making fire-related decisions, and serves as an operational manual. Development of a new fire plan is compatible with the broader goals and objectives presented in Grand Canyon National Park's 1995 General Management Plan (GMP).

The Environmental Impact Statement process will identify and evaluate the environmental impacts of several alternatives for fire management in the park. Alternatives will address resource protection, potential resource impacts, and various mitigation practices necessary or desirable to minimize adverse impacts to resource conditions. Alternatives to be considered will include no-action, and a reasonable range of alternatives that meet the project objectives, including various combinations of fire suppression, wildland fire use, prescribed fire, and mechanical treatments. The Environmental Impact Statement process will be conducted in consultation with the U.S. Fish and Wildlife Service, the Arizona State Historic Preservation Office, natural resource management agencies, affiliated American Indian tribes, and other interested Federal, state, and local agencies. Attention will also be given to resources outside the boundaries that affect the integrity of Grand Canyon.

Issues are expected to include protection of cultural resources, protection of plant and wildlife habitats, effects on native and non-native species, protection of threatened and endangered species and their habitats, protection of other natural resources, wildland urban interface, fire in proposed wilderness, protection of park neighbors' property, reducing impacts to park visitors, protection of life and property, protection of air quality, effects on tourism, and changes in landscape-scale vegetation patterns.

The public involvement process will include distribution of a scoping document requesting public input and comment. Several public meetings will be held in locations surrounding the park. The scoping document will describe the project in general, identify preliminary issues, and include specific meeting dates and locations. Information can be obtained from Dan Oltrogge, FMP Project Leader, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023, 928–638–7822.

DATES: The Park Service will accept comments from the public through November 17, 2003.

ADDRESSES: Information will be available for public review and comment in the office of the FMO, Dan Oltrogge, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023; 928–638–7822.

FOR FURTHER INFORMATION CONTACT: Dan Oltrogge, FMP Project Leader, Grand Canyon National Park (928) 638–7822 or go to the Grand Canyon Compliance Web site at *http://www.nps.gov/grca/compliance.*

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping document, you may submit your comments by any one of several methods. You may mail comments to FMP Project, Grand Canyon National Park, P.O. Box 129, Grand Canyon, Arizona 86023. You may also comment via electronic mail (e-mail) to *GRCA_FMP@nps.gov.* Please submit e-mail comments as a text file avoiding the use of special characters and any form of encryption. Please also include your name, e-mail address, and return mailing address in your e-mail message. Finally, you may hand-deliver comments to Grand Canyon National Park at the Headquarters building between 8 a.m. and 5 p.m. weekdays. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions

from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 14, 2003.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–23350 Filed 9–15–03; 8:45 am]

BILLING CODE 4312–ED–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Environmental Impact Statement on the Klamath Project Operation, Oregon and California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of formal scoping period for the draft environmental impact statement on the Klamath Project operation.

SUMMARY: The Bureau of Reclamation (Reclamation) is extending the formal scoping period on an environmental impact statement (EIS) for the Klamath Project (Project) operation, a Federal reclamation project, located in southern Oregon and northern California. A formal scoping period of 120 days, through September 2, 2003, was previously announced in the **Federal Register** (68 FR 23761, May 5, 2003).

DATES: Reclamation is extending the formal scoping period an additional 90 days following publication of this notice. Written comments should be sent to the Reclamation Project Manager (*see* **ADDRESSES** below) December 15, 2003. Reclamation invites all interested parties to submit written comments or suggestions during the scoping period. Comments postmarked after that date will be considered to the extent practical. Dates and locations of public scoping meetings will be published in the **Federal Register**

ADDRESSES: Please send written comments to the Mr. Daniel S. Fritz, Project Manager, Klamath Basin Area Office, Mid-Pacific Region, Bureau of Reclamation, Attention: KO–150, 6600 Washburn Way, Klamath Falls, OR 97603.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. Fritz at (541) 880–2556.

SUPPLEMENTARY INFORMATION: Reclamation is extending the formal scoping period to allow additional time to receive public comments and to conduct scoping meetings. Continued developments related to the Klamath Project have occurred since the formal scoping was initiated in early May 2003. Additional information may become available, such as the final report of the National Academy of Science's Committee on Endangered and Threatened Fishes in the Klamath River Basin, that could result in new information relevant to the proposed action and prompt additional scoping comments from the public useful for the environmental impact statement.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. 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 disclosure in their entirety.

Dated: September 3, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–23542 Filed 9–15–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1054 and 1055 (Preliminary)]

Light-Walled Rectangular Pipe and Tube From Mexico and Turkey

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of a preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1054 and 1055 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico and Turkey of light-walled rectangular pipe and tube,[1] provided for in subheading 7306.60.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by October 24, 2003. The Commission's views are due at Commerce within five business days thereafter, or by October 31, 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on September 9, 2003, on behalf of the following firms: California Steel and Tube, City of Industry, CA; Hannibal Industries, Los Angeles, CA; Leavitt Tube Co., Chicago, IL; Maruichi American Corp., Santa Fe Springs, CA; Northwest Pipe, Portland, OR; Searing Industries, Rancho Cucamonga, CA; Vest, Inc., Los Angeles, CA; and, Western Tube and Conduit, Long Beach, CA.

Participation in the investigations and public service list.—Persons (other than

[1] The subject products are certain welded light-walled non-alloy steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 millimeters (0.156 inch). The subject products have rectangular cross sections ranging from 0.375 x 0.625 inches to 2 x 6 inches, or square sections ranging from 0.375 to 4 inches, regardless of specification.

petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to §207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 30, 2003, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olympia Hand (202–205–3182) not later than September 25, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 3, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 11, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–23594 Filed 9–15–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Temporary Extended Unemployment Compensation for Displaced Airline and Related Workers

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before November 17, 2003.

ADDRESSES: Send comments to Thomas Stengle, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave. NW., Washington, DC 20210. Phone number: (202) 693–2991. Fax: 202–693–3229. (These are not toll free numbers.) E-mail: *stengle.thomas@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 2003, President Bush signed into law an enhancement to the Temporary Extended Unemployment Compensation (TEUC) program. This enhancement created special rules for determining TEUC eligibility for certain displaced airline related workers. Such workers may qualify for an additional 26 weeks of basic TEUC benefits if the worker became unemployed as a result of: (1) Reductions in service by an air carrier as a result of a terrorist action or security measure; (2) a closure of an airport in the United States as a result of a terrorist action or security measure; or (3) a military conflict with Iraq that has been authorized by Congress. In order to determine TEUC eligibility for these displaced airline and related workers specific information from employers must be collected. Emergency approval for this collection of information was granted through November 30, 2003. However, to cover the existing period of program implementation and to provide for potential congressional extensions of this program, ETA is seeking a 2 year extension for this collection package.

II. Desired Focus of Comments

Currently, the Department of Labor's Employment and Training Administration is soliciting comments concerning the proposed extension of the Temporary Extended Unemployment Compensation for Displaced Airline Workers information collection request.

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: TEUC—Displaced Airline and Related Workers.

OMB Number: 1205–0440.

Affected Public: State, Local, or Tribal government.

Annualized Reporting Burden (time measured in hours):

	Number of Respondents Burden	Estimated time per response	Number of Reports	Total
Employer	40,000	.25	1	10,000
State	40,000	.50	1	20,000
Total Burden Hours:				30,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $781,700.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request and will become a matter of public record.

Dated: September 8, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–23546 Filed 9–15–03; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–454]

Exelon Generation Company, LLC, Byron Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, for Facility Operating License No. NPF–37 issued to Exelon Generation Company, LLC, (Exelon or the licensee), for operation of the Byron Station, Unit No. 1, located in Ogle County, Illinois. Therefore, pursuant to 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow the use of a limited number of fuel rods with ZIRLO™ cladding that has a tin content lower than the currently licensed tin content range for ZIRLO™ in one lead test assembly (LTA) (*i.e.*, LTA M09E). The licensee has also requested approval to irradiate two LTAs (*i.e.*, M09E and M12E) that contain low-tin ZIRLO™ clad fuel rods and two ''standard'' Westinghouse 17x17 VANTAGE+ ZIRLO™ assemblies (*i.e.*, M10E and M11E) up to 69,000 MWD/MTU for Byron, Unit 1 Cycle 13 (B1C13). The burnup limits are not part of the technical specifications (TS), but are design bases limits for the fuel cladding, and limit the current fuel rod-average burnup to less than or equal to 60,000 MWD/MTU. The proposed action is in accordance with the licensee's application dated January 17, 2003, as supplemented by letter dated March 24, 2003. The licensee has indicated that it intends to submit an amendment request with respect to an increase in the rod-average burnup.

The Need for the Proposed Action

Available industry data indicates that corrosion resistance of nuclear fuel cladding improves for cladding with a low tin content. The optimum tin level provides a reduced corrosion rate while maintaining the benefits of mechanical strength and resistance to accelerated corrosion from abnormal chemistry conditions. In addition, fuel rod corrosion/temperature feedback effects have become more limiting with respect to fuel rod design criteria. By reducing the associated corrosion buildup and, thus, minimizing temperature feedback effects, additional margin to fuel rod internal pressure design criteria can be obtained.

As part of a program to address these issues, Westinghouse Electric Company (Westinghouse), has developed an LTA program in cooperation with Exelon that includes ZIRLO™ fuel cladding with a tin content lower than the currently licensed range for ZIRLO™. Use of fuel rods using such low-tin cladding requires exemptions from 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors''; 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors''; and Appendix K to 10 CFR Part 50, ''ECCS Evaluation Models.''

In addition, the basis for approval of ZIRLO™ cladding used in the Byron core is provided in an NRC safety evaluation addressed to Westinghouse, ''Acceptance for Referencing of Topical Report WCAP–12610, 'VANTAGE+ Fuel Assembly Reference Core Report,' '' dated July 1, 1991. The safety evaluation approved the use of the VANTAGE+ fuel design that was described in WCAP–12610–P–A, and found its use acceptable up to a rod-average burnup of 60,000 MWD/MTU. Use of the VANTAGE+ fuel design in the Byron core beyond that burnup level has not been approved yet because of uncertainty in changes in the gap-release fraction associated with increasing fuel burnup. The present methods for assessing fission gas releases have not been validated with actual data at higher peak-rod burnups. Therefore, part of the Westinghouse LTA program includes acquisition of actual operating data through the limited use of fuel rods in the Byron Unit 1 core to obtain burnup levels higher than 60,000 MWD/MTU that will be examined at the end of the Byron Unit 1, Cycle 13 (B1C13) fuel cycle.

Two LTAs (*i.e.*, LTA M09E and M12E) were in use in Byron Unit 2, Cycle 10 (B2C10). These LTAs are composed of low-tin and standard composition ZIRLO™ cladding. The licensee modified one of the LTAs (M09E) to include fresh fuel rods with ZIRLO™ cladding that has a tin content lower than that of the ZIRLO™ cladding of the currently licensed fuel. No fuel rods were replaced in LTA M12E. Both LTAs will be used in Byron Unit 1 Cycle 13

(B1C13) in non-limiting core locations. In addition, the licensee proposes to irradiate two standard 17x17 VANTAGE+ ZIRLO™ assemblies (*i.e.*, M10E and M11E) in Byron, Unit 1 Cycle 13 (B1C13), also in non-limiting core locations. At the end of B2C10, the approximate assembly average burnup is expected to be 51,094 MWD/MTU for LTA M09E, 51,123 MWD/MTU for LTA M12E, 51,457 MWD/MTU for LTA M10E, and 51,423 MWD/MTU for LTA M11E.

The licensee has requested that it (1) be authorized to use the modified LTA M09E in Byron, Unit 1 Cycle 13 (B1C13) to obtain data on both the use of low-tin ZIRLO™ and high burnup operation (up to 69,000 MWD/MTU), and (2) be authorized to irradiate the other three assemblies (M10E, M11E, and M12E) up to 69,000 MWD/MTU to obtain data on the effects of high burnup operation. The proposed irradiation of these fuel assemblies does not require a change to the TS; however; this burnup will exceed the current design basis limit for the fuel cladding of 60,000 MWD/MTU for peak fuel rod-average burnup.

Irradiation of these four LTAs to a higher burnup will provide data on fuel and materials performance that will support industry goals of extending the current fuel burnup limits and will provide additional insight regarding gap-release fraction related to fuel performance behavior at high burnups. The data will also help confirm the applicability of nuclear design and fuel performance models at high burnups.

Environmental Impacts of the Proposed Action

Background

In its previous environmental assessments concerning fuel burnup, the Commission relied on the results of a study conducted for the NRC by Pacific Northwest Laboratories. The results of the study were documented in detail in the report, ''Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors'' (NUREG/CR–5009, PNL–6258, February 1988). The overall findings of this study showed there were no significant adverse effects that would result from increasing the batch-average burnup level of 33,000 MWD/MTU to 50,000 MWD/MTU or above as long as the maximum rod average burnup level of any fuel rod was no greater than 60,000 MWD/MTU. Furthermore, based on the above study and the report, ''The Environmental Consequences of Higher Fuel Burn-up,'' (AIF/NESP–032), issued by the Atomic Industrial Forum, the NRC staff concluded that the environmental impacts summarized in Table S–3 of 10 CFR 51.51 and in Table S–4 of 10 CFR 51.52 for a burnup level of 33,000 MWD/MTU are conservative and bound the corresponding impacts for burnup levels up to 60,000 MWD/MTU and uranium-235 enrichments up to 5 percent by weight.[1]

In this environmental assessment regarding the impacts of the use of extended burnup fuel beyond 60,000 MWD/MTU, the Commission is also relying on the results of an updated study conducted for it by the Pacific Northwest National Laboratory (PNNL) entitled, ''Environmental Effects of Extending Fuel Burnup Above 60 GWd/MTU,'' (NUREG/CR–6703, PNNL–13257, January 2001). This report represents an update to NUREG/CR–5009. Although the study evaluated the environmental impacts of high burnup fuel up to 75,000 MWD/MTU, certain aspects of the review were limited to evaluating the impacts of extended burnup up to 62,000 MWD/MTU because of the need for additional data about the effect of extended burn-up on gap-release fractions. During the study, all aspects of the fuel-cycle were considered, from mining, milling, conversion, enrichment and fabrication through normal reactor operation, transportation, waste management, and storage of spent fuel.

Environmental Impacts

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with (1) using LTA M09E with fuel rods composed of ZIRLO™ cladding that has a tin content lower than the currently licensed tin content range for ZIRLO™, and (2) irradiating four fuel assemblies (M09E, M10E, M11E, and M12E) to a burnup of 69,000 MWD/MTU. The following is a summary of the staff's evaluation:

The extended burnup assemblies will have a different mix of fission and activation product radionuclides than the rest of the core. The activities of short-lived fission products will tend to remain constant or decrease slightly, while activities associated with activation products and actinides tend to increase with increasing burnup. As discussed in Attachment 2 to the licensee's January 17, 2003, request, although there are variations in core inventories of isotopes due to extended burnup, there are no significant increases of isotopes that are major contributors to accident doses. In addition, the four fuel assemblies will only contribute a small variation in the isotopic population of the entire core (193 assemblies). Thus, with extended burnup of the four assemblies and their placement in non-limiting core locations, no significant increase in the release of radionuclides to the environment is expected during normal operation. In addition, no change is being requested by Exelon in the licensed technical specifications pertaining to allowed cooling-water activity concentrations. If leakage of radionuclides from the extended burnup fuel assemblies occurs during operation, then the radioactive material is expected to be removed by the plant cooling water cleanup system.

Using the modified LTA M09E in B1C13 with low-tin ZIRLO™ cladding and irradiating the four fuel assemblies to a burnup of 69,000 MWD/MTU will not result in changes in the operation or configuration of the facility. There will be no change in the level of controls or methodology used for processing radioactive effluents or handling solid radioactive waste, nor will the proposal result in any change in the normal radiation levels within the plant. Accordingly, the impacts on workers and the general population would not be significant because of the small radiological effect of the four extended-burnup assemblies.

Environmental Impacts of Potential Accidents

Accidents that involve the damage or melting of the fuel in the reactor core and spent-fuel handling accidents were also evaluated in NUREG/CR–6703. The accidents considered were a loss-of-coolant accident (LOCA), a steam generator tube rupture, and a fuel-handling accident. In addition, Exelon addressed both LOCA and non-LOCA events in Attachment 2 to the January 17, 2003 request.

For LOCAs, the amount of radionuclides that would be released from the core (1) is proportional to the amount of radionuclides in the core and (2) is not significantly affected by the gap-release fraction. The gap-release fraction is a small contribution to the amount of radionuclides available for release when the fuel is severally damaged. Any increase in the amount of some longer-lived radionuclides available for release from the four LTAs (1) will be small and (2) will not result in a significant increase in the overall core inventory of radionuclides. Therefore, there would be no significant increase in the previously calculated

[1] See ''Extended Burnup Fuel Use in Commerical LWRs; Environmental Assessment and Finding of No Significant Impact,'' 53 FR 6040, February 29, 1988.

dose from a LOCA and the dose would remain below regulatory limits.

The pressurized-water reactor (PWR) steam generator tube rupture accident involves direct release of radioactive material from contaminated reactor coolant to the environment. As discussed previously, no change is being requested by Exelon in the licensed technical specifications pertaining to allowed cooling-water activity concentrations. The maximum coolant activity is regulated through technical specifications that are independent of fuel burnup. Therefore, the gap-release fraction does not significantly affect the amount of radionuclides available for release during a steam generator tube rupture. Therefore, there would be no significant increase in the previously calculated dose from a steam generator tube rupture and the calculated dose would remain below regulatory limits.

The scenario postulated to evaluate potential fuel-handling accidents involves a direct release of gap activity to the environment. The assumptions regarding gap activity are based on guidance in Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors'' and NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants''; the gap activity consists primarily of the noble gases, iodines, and cesiums. The only isotopes that contribute significant fractions of the committed effective dose equivalent and thyroid doses are ^{131}I and ^{134}Cs. Similarly, the only isotopes that contribute significant fractions of the deep dose are ^{132}I and ^{133}Xe. The inventory of iodine, the primary dose contributor, decreases with increasing burnup. However, gap-release fraction increases as burnup increases; this in turn, would increase the calculated dose from a fuel handling accident involving one of the four assembles addressed in this exemption. As discussed earlier and outlined in NUREG/CR–6703, additional information is needed to assess the relationship between gap-release fraction and burnup beyond 60,000 MWD/MTU to 75,000 MWD/MTU. However, based on the trend of the gap-release fraction from 33,000 MWD/MTU to 60,000 MWD/MTU, the increase in gap-release fraction as burnup increases from 60,000 MWD/MTU to 69,000 MWD/MTU is expected to be small. Therefore, the staff concludes (1) that the increase in the previously calculated dose resulting from a fuel-handling accident involving one of the assemblies would not be significant and (2) that the dose would remain below regulatory limits.

Environmental Impacts of Transportation

The environmental effects of incident-free spent fuel transportation were also evaluated in NUREG/CR–6703. Incident-free transportation refers to transportation activities in which shipments of radioactive material reach their destination without releasing any radioactive cargo to the environment. The vast majority of radioactive shipments are expected to reach their destination without experiencing an accident or incident, or releasing any cargo. The incident-free impacts from these normal, routine shipments arise from the low levels of radiation that are emitted externally from the shipping container. Although Federal regulations in 10 CFR part 71 and 49 CFR Part 173 impose constraints on radioactive material shipments, some radiation is not entirely shielded by the shipping container and exposes nearby persons to low levels of radiation. Based on the analyses presented in NUREG/CR–6703, the staff concludes that doses associated with incident-free transportation of spent fuel with burnup to 75,000 MWD/MTU are bounded by the doses given in 10 CFR 51.52, Table S–4, for all regions of the country if dose rates from the shipping casks are maintained within regulatory limits.

Additionally, the environmental effects of spent fuel transportation accidents were also evaluated in NUREG/CR–6703. Accident risks are the product of the likelihood of an accident involving a spent-fuel shipment and the consequences of a release of radioactive material resulting from the accident. The consequences of such a transportation accident are represented by the population dose from a release of radioactive material, given that an accident occurs that leads to a breach in the shipping cask's containment systems. The consequences are a function of the total amount of radioactive material in the shipment, the fraction that escapes from the shipping cask, the transport of radioactive material to humans, and the characteristics of the exposed population. Considering the uncertainties in the data and computational methods, the overall changes in transportation accident risks due to increasing fuel burnup of the four fuel assemblies are not significant. The calculated doses resulting from a spent fuel transportation accident will remain below regulatory limits, and no significant increase in the environmental effects of spent-fuel transportation accidents are expected.

Non-Radiological Impacts

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Summary

Based on the staff's independent assessment discussed above, the NRC concludes that there will be no significant environmental impacts associated with (1) using LTA M09E with fuel rods composed of ZIRLO™ cladding that has a tin content lower than the currently licensed tin content range for ZIRLO™, and (2) irradiating the four fuel assemblies (M09E, M10E, M11E, and M12E) to a burnup of 69,000 MWD/MTU.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. However, it would deny to the licensee and the NRC operational data on low-tin content ZIRLO™ and the performance of fuel at extended burnup conditions.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Byron Station, Unit Nos. 1 and 2, dated April 30, 1982.

Agencies and Persons Consulted

On July 9, 2003, the staff consulted with the Illinois State official, Frank Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the foregoing environmental assessment, the NRC staff concludes that (1) allowing use of an LTA (*i.e.*, LTA M09E) with a limited number of replacement fuel rods with ZIRLO™ cladding that has a tin content lower than the currently licensed tin content range for ZIRLO™, and (2) permitting irradiation of four fuel assemblies (M09E, M10E, M11E, and

M12E) to a burnup of 69,000 MWD/MTU, will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed actions.

For further details with respect to the proposed action, see the licensee's letters dated January 17 and March 24, 2003. Documents may be examined, and/or copied for a fee, at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component of NRC's Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1 (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of September, 2003.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–23556 Filed 9–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series and its conforming Standard Review Plan Chapter. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.178, ''An Approach for Plant-Specific Risk-Informed Decisionmaking for Inservice Inspection of Piping,'' provides an approach for plant-specific risk-informed decisionmaking for inservice inspection of piping.

Standard Review Plan Chapter 3.9.8, ''Standard Review Plan for the Review of Risk-Informed Inservice Inspection of Piping,'' is a chapter in NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants.'' Chapter 3.9.8 describes review procedures and acceptance guidelines for NRC staff reviews of proposed plant-specific, risk-informed changes to a licensee's inservice inspection program for piping.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. W.B. Hardin, (301) 415–6561; e-mail *wbh@nrc.gov.*

Many regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to <*distribution@nrc.gov*>. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; <*http://www.ntis.gov*>. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD this 29th day of August 2003.

For The Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–23555 Filed 9–15–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: September 8, 2003.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 68 FR 52065, August 29, 2003.

ADDITION: Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2003–2, Experimental Parcel Return Services.

At its meeting on September 8, 2003, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

FOR FURTHER INFORMATION CONTACT: William J. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

William T. Johnstone,

Secretary.

[FR Doc. 03–23767 Filed 9–12–03; 2:38 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (ALARIS Medical Systems, Inc., Common Stock, $.01 Par Value) File No. 1–10207

September 10, 2003.

ALARIS Medical Systems, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer states that it wishes to withdraw its Security from listing and registration on the Amex and to list its Security on the New York Stock Exchange, Inc. (''NYSE''). The Issuer believes that the global recognition of the NYSE will be beneficial to the Issuer and its shareholders. The Issuer states that it intends to list the Security on the NYSE on September 25, 2003.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 6, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–23532 Filed 9–15–03; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48462; File No. SR–Amex–2003–47]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC To Amend Commentary .02 of Amex Rule 126(g) To Restrict the Crossing of Agency Orders of 5,000 Shares or More to Orders for the Accounts of Persons Who Are Not Brokers or Dealers

September 9, 2003.

On May 19, 2003, the American Stock Exchange LLC (''Amex'') 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 Commentary .02 to Amex Rule 126(g) (''Special Rules'' under ''Precedence of Bids and Offers'') to restrict the crossing of agency orders of 5,000 shares or more to orders for the accounts of persons who are not brokers or dealers. The proposed rule change was published for comment in the **Federal Register** on August 5, 2003.[3] The Commission received no comments on the proposal.

After careful review, 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] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the Amex's rules be 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. The Commission believes that the Amex's proposal to restrict the crossing of agency orders of 5,000 shares or more to orders for the accounts of persons who are not brokers or dealers appears to be reasonably designed to facilitate the efficient crossing of public customer orders on the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Amex–2003–47) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23548 Filed 9–15–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48244 (July 29, 2003), 68 FR 46254.

[4] In approving this proposal, 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(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48464; File No. SR–Amex–2003–83]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Listing Standards Applicable to Units

September 9, 2003.

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 July 25, 2003, 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 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 proposes to amend sections 101 and 1003 of the Amex *Company Guide* to clarify the listing requirements applicable to units.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex *Company Guide* specifies the standards applicable to the listing of various types of securities, including common stock, preferred stock, bonds, debentures and warrants. On occasion, issuers seek to list units consisting of two or more different types of securities (*e.g.*, common stock and warrants, common stock and bonds). In evaluating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the eligibility of such units for listing, Amex staff requires that each component of the unit satisfy the listing standards applicable to the particular type of security involved. Thus, in the case of a unit consisting of common stock and bonds, the common stock component would be required to satisfy the standards applicable to common stock and the bond would be required to satisfy the standards applicable to bonds. Typically, such a unit will list and trade for a limited period of time (*e.g.*, thirty days) and then automatically separate into its component parts which will be listed and traded.

The Exchange has recently received applications for the listing of Income Deposit Securities (IDSs), which are units comprised of common stock and subordinated notes. In contrast to a typical unit, IDSs will trade as a unit for an extended period of time, although holders will have limited rights to separate the IDS into its component parts (or to combine the components into an IDS).

In order to provide greater clarity and transparency with respect to the listing standards applicable to IDSs and similar securities, the Exchange is proposing to amend section 101 of the *Company Guide* to specifically provide that each component of a unit must meet the applicable listing standards. Comparable amendments would be made to section 1003 with respect to the continued listing standards applicable to units.

Additionally, the Exchange is proposing changes to section 401 of the *Company Guide* to specify that the issuer of a unit is required to immediately publicize any change in the terms of a listed unit, such as changes to the terms and conditions of any of the components or to the ratio of the components within the unit, and to provide current information in this regard on its Web site.[3] Such changes would include those resulting from a stock split or an automatic exchange of one or more components of the unit (*e.g.*, as a result of a secondary offering of units comprised of debt securities with original issue discount). The issuer would be expected to provide such public disclosure as soon as practicable in relation to the nature and effective date of the change. For example, changes resulting from a stock split should be subject to prior disclosure, while changes with respect to original issue discount should be disclosed as soon as such information is available. The Exchange believes that this expanded disclosure requirement is necessary in order to insure that sufficient information regarding the attributes of these securities is publicly available and readily accessible on a timely basis.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[4] in general and furthers the objectives of section 6(b)(5) of the Act[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–83 and should be submitted by October 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23549 Filed 9–15–03; 8:45 am]

BILLING CODE 8010–01–P

[3] An issuer which does not maintain a website would be required to include a description of the current terms and conditions of the components of the unit, and the ratio of the components comprising the unit, in its annual report pursuant to section 610 of the Amex *Company Guide.*

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48471; File No. SR–CBOE–2003–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Establish a Limited Pilot Program Relating to Maximum Bid/Ask Differentials

September 10, 2003.

On February 27, 2003, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt, on a pilot basis, a limited exemption to the Market-Maker bid/ask differential requirements contained in CBOE Rule 8.7(b)(iv). On July 25, 2003,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on August 4, 2003.[4] The Commission received no comments on the proposed rule change. This Order approves the proposed rule change, as amended.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and with the requirements of section 6(b).[6] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange is introducing a new ''autofade'' functionality which will cause one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (''Linkage Plan'') [8] and/or when the size associated with the quote has been depleted by automatic executions (of both Linkage orders and non-Linkage orders). The Exchange has represented that in certain circumstances it might be necessary for the autofade functionality to move one side of the quote beyond the bid/ask parameters provided for in CBOE Rule 8.7(b)(iv), and therefore, has proposed a temporary exception to this Rule. Under the proposed rule change, until January 30, 2004, if the autofade functionality widens a quote beyond that permitted by CBOE Rule 8.7(b)(iv) for 30 seconds, a responsible broker or dealer disseminating that quote will not be considered in violation of the rule. However, if a quote remains outside of the maximum width after the 30 second time period, the responsible broker or dealer disseminating that quote will be deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes.

The Commission believes that because the CBOE's autofade functionality will automate the process, it will help ensure that members comply with the Linkage Plan. For example, if a Participant receives a Principal Acting as Agent (''PA'') order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality will automate the process to ensure that members are in full compliance with this provision of the Linkage Plan.

Further, the proposed rule change will allow the Exchange to modify how quotes are handled following automatic executions. Currently, if a quote is exhausted via automatic executions, the Exchange may disseminate a size of ''1'' for a specified ''reroute'' period during which time the Exchange's Retail Automatic Execution System (''RAES'') is disengaged. Autofade would eliminate any need to disengage the RAES system and disseminate a size of 1 contract at the same price. Once a quote is exhausted, autofade would move one side of the quote to a price that is one tick inferior to the NBBO (as described above).

The Commission believes that implementation of the autofade functionality will facilitate compliance with the Linkage Plan and will result in more efficient executions through RAES, as described above. Therefore, the Commission believes that it is appropriate, on a pilot basis, to suspend the requirements of CBOE Rule 8.7(b)(iv) to allow the autofade functionality to widen one side of a quote beyond that permitted by the Rule for 30 seconds.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2003–08), as amended, is approved on a pilot basis, to expire January 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23547 Filed 9–15–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated July 25, 2003 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48237 (July 28, 2003), 68 FR 45869.

[5] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48466; File No. SR–NASD–2003–125]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890

September 9, 2003.

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 August 8, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to 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 Nasdaq. On September 4, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Pursuant to sections 19(b)(3)(A)(i) and (iii) of the Act [4] and Rules 19b–4(f)(1) and (3) thereunder,[5] Nasdaq has designated this proposal as one that, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, is concerned solely with the administration of the self-regulatory organization, which renders the proposed rule change effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change seeks to reflect the administrative shift of certain responsibilities under NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890 from Nasdaq Market Operations to Nasdaq MarketWatch and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alex Kogan, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 3, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq corrected rule text, clarified the application of Rule 19(b)(3)(A) to the proposed rule change, and clarified its description of NASD Rules 5265 and 11890.

[4] 15 U.S.C. 78s(b)(3)(A)(i) and (iii).

[5] 17 CFR 240.19b–4(f)(1) and (3).

to clarify members' obligations under NASD Rule 4625.[6] This proposed rule change is effective upon the Commission's receipt of Nasdaq's filing.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

4614. Stabilizing Bids

(a) Market Maker Obligation/Identifier

A market maker that intends to stabilize the price of a Nasdaq security that is a subject or reference security under SEC Rule 101 shall submit a request to Nasdaq [Market Operations] *MarketWatch* for the entry of a one-sided bid that is identified on Nasdaq as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

(b) and (c) No change.

(d) Submission of Request to Association

(1) A market maker that wishes to enter a stabilizing bid shall submit a request to Nasdaq [Market Operations] *MarketWatch* for entry on Nasdaq of a one-sided bid identified as a stabilizing bid. The market maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to Nasdaq [Market Operations] *MarketWatch* that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to Nasdaq [Market Operations] *MarketWatch* that shall include:

(A) The identity of the security and its Nasdaq symbol;

(B) The contemplated effective date of the offering and the date when the offering will be priced;

(C) The date and time that an identifier should be included on Nasdaq; and

(D) A copy of the cover page of the preliminary or final prospectus or similar offering document, unless the Association determines otherwise.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq [Market Operations] *MarketWatch* to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq [Market Operations] *MarketWatch* only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq [Market Operations] *MarketWatch.* Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Association one business day in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if:

(1) The written request for withdrawal is received by the Association one business day in advance, and is approved by the Association;

(2) The request includes a list of the securities for which withdrawal is requested; and

(3) The request is made by a market maker with three (3) or fewer Nasdaq level 3 terminals. Excused withdrawal status may be granted to a market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611 above, provided the market maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(c) No change.

(d) Excused withdrawal status or passive market maker status may be granted to a market maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a Nasdaq security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to Nasdaq [Market Operations] *MarketWatch* and the Market Regulation department of NASD Regulation, Inc. no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC rule 10, unless later notification is necessary under the specific circumstances.

(A) No change.

(B) The managing underwriter shall advise each market maker that it has been identified as a distribution participant or an affiliated purchaser to Nasdaq [Market Operations] *MarketWatch* and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies Nasdaq [Market Operations] *MarketWatch* as required by subparagraph (d)(2), below.

(2) A market maker that has been identified to Nasdaq [Market Operations] *MarketWatch* as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify Nasdaq [Market Operations] *MarketWatch* and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a market maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies Nasdaq [Market Operations] *MarketWatch* of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this

[6] Nasdaq states that, with one exception, the proposed rule change is concerned solely with the administration of the self-regulatory organization, and therefore immediately effective pursuant to section 19(b)(3)(A)(iii) of the Act. The one exception to this is the addition of the words ''or other transaction'' to one of the examples contained in NASD Rule 4625 (the relevant example was originally contained in Rule 4625(a)(2)(D) but is now being re-designated as Rule 4625(a)(1)(G)). Nasdaq states that this particular aspect of the proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, and is therefore immediately effective pursuant to section 19(b)(3)(A)(i) of the Act. *See* Amendment No. 1, *supra, n.3.*

subparagraph shall prohibit the Association from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact Nasdaq [Market Operations] *MarketWatch* to obtain an excused withdrawal as required by subparagraphs (a) and (d) of this Rule.

(4) No change.

(5) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (d)(1) of this rule shall submit a request a to Nasdaq [Market Operations] *MarketWatch* and the market Regulation Department of NASD Regulation, Inc. to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request by this subparagraph may be submitted on the Underwriting Activity Report.

(e) No change.

* * * * *

4620. Voluntary Termination of Registration

(a) No change.

(b) Notwithstanding the above, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) The market maker notified [Market Operations] *MarketWatch* of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;

(2) through (3) No change

(c) Factors that the Association will consider in granting a reinstatement under paragraph (b) of this rule include, but are not limited to:

(1) through (4) No change

(5) the timeliness with which the market maker notified [Market Operations] *MarketWatch* of the error.

(d) No change.

* * * * *

4624. Penalty Bids and Syndicate Covering Transactions

(a) and (b) No change

(c) Notwithstanding paragraph (a), a market maker may request that its quotation be identified as a penalty bid on Nasdaq by providing notice to Nasdaq [Market Operations] *MarketWatch,* which notice shall include the date and time that the penalty bid identifier should be entered on Nasdaq and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identifier is entered on Nasdaq.

(d) No change

* * * * *

4625. Obligation To Provide Information

(a) A NASD member operating in or participating in the third market, The Nasdaq Stock Market, or other Nasdaq-operated system, shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:

(1) Nasdaq *MarketWatch* staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, or provision of a joint industry plan (*e.g.*, ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq *MarketWatch* is responsible for administering or to other duties and/or obligations imposed on Nasdaq *MarketWatch* by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(A) A locked or crossed market; or

(B) A trade reported by a member or ECN to the Automated Transaction Confirmation Service (''ACT''); or

(C) Trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to NASD Rule 4120 and IM–4120–1; or

(D) A quotation that appears not to be reasonably related to the prevailing market; *or*

(E) A clearly erroneous transaction, pursuant to NASD Rule 11890; or

(F) A request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 5106 and 6350; or

(G) The resolution of a trade-through complaint, or other transaction, pursuant to NASD Rules 5262, 5265, and 11890; or

(H) A request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624.

(2) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, provision of a joint industry plan (*e.g.*, ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations imposed on Nasdaq Market Operations by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:

(A)[a clearly erroneous transaction, pursuant to NASD Rule 11890;

(B)] a request to reconsider a determination to withhold a primary market maker designation, pursuant to NASD Rule 4612; *or*

[(C) a request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 4730, 5106 and 6350;

(D) the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890;

(E)](*B*) an ACT input error; or

[(F)]*(C)* an equipment failure [; or

(G) a request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624].

(b) No change

* * * * *

5106. Requirements Applicable to Market Makers

(a) No change

(b) Market Maker Obligations.

The following requirements and procedures govern a broker/dealer's participation in Nasdaq International as a Service market maker.

(1) Registration.

(A) through (C) No change.

(D) A Service market maker may become registered in a newly qualified security by telephoning [Market Operations] *MarketWatch*. If registration is requested within five (5) business days after the issue becomes qualified, registration shall take effect at the time the request is entered.

(E) and (F) No change.

(2) No change

(3) Character of Quotations

(A) through (C) No change

(D) If a Service market maker's ability to enter or update quotations is impaired, the market maker shall immediately contact [Market Operations] *MarketWatch* to request the withdrawal of its quotations.

(E) through (H) No change.

(4) Withdrawal of Quotations

(A) A Service market maker that wishes to withdraw its quotations in a

qualified security shall contact [Market Operations] *MarketWatch* to obtain excused withdrawal status prior to effecting withdrawal. Excused withdrawals shall be granted by [Market Operations] *MarketWatch* only upon the demonstration of the existence of one of the circumstances set forth in subparagraphs (B) and (C) below.

(B) Excused withdrawal status based on physical circumstances beyond the Service market maker's control may be granted for up to five (5) business days, unless extended by [Market Operations] *MarketWatch.* Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. Excused withdrawal status based on religious holidays or national holidays in the U.K. may be granted only if the request is received by the Association five (5) business days in advance and is approved by the Association. Excused withdrawal status based on vacation may be granted only if: the request for withdrawal is received by the Association twenty (20) business days in advance, and is approved by the Association; the request includes a list of the securities for which withdrawal is requested; and the request is made by a Service market maker with three (3) or fewer Nasdaq Workstation™ units authorized for market making in the Service. The following shall not constitute acceptable reasons for granting excused withdrawal status: pending news, a sudden influx of orders or price changes, or the desire to effect transactions with competitors.

(C) No change.

(5) No change.

(6) Stabilizing Bids

(A) and (B) No change.

(C) Notice to the Association

(i) A Service market maker that wishes to enter a stabilizing bid shall so notify [Market Operations] *MarketWatch* in writing prior to the first day on which the stabilizing bid is to appear in the Service. The notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the date on which the security's registration will become effective, if it is already quoted in the Service; whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus or shelf registration statement, unless the Association determines otherwise.

(ii) In the case of a pre-effective stabilizing bid, the notice shall include: the name of the qualified Nasdaq security and its Nasdaq symbol; the contemplated effective date of the offering; whether it is contemplated that the pre-effective stabilizing bid will be converted to a stabilizing bid and, if so, whether the stabilizing bid will be a penalty bid or a penalty-free bid; and a copy of the preliminary prospectus, unless the Association determines otherwise.

(iii) A service market maker that has provided the written notice prescribed above shall also contact [Market Operations] *MarketWatch* for authorization on the day the market maker wishes to enter the stabilizing bid into the Service.

(D) and (E) No change.

* * * * *

6350. Withdrawal of Quotations

(a) A CQS market maker that wishes to withdraw quotations in a reported security shall contact Nasdaq [Market Operations] *MarketWatch* to obtain excused withdrawal status prior to withdrawing its quotations.

(b) Excused withdrawal status based on illness, vacations or physical circumstances beyond the CQS market maker's control may be granted for up to five (5) business days, unless extended by Nasdaq [Market Operations] *MarketWatch.* Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Association has initiated a trading halt for ITS/CAES Market Makers in the security, pursuant to Rule 4120.

* * * * *

11890. Clearly Erroneous Transactions

(a) Authority to Review Transactions Pursuant to Complaint of Market Participant

(1) No change.

(2) Procedures for Reviewing Transactions

(A) Any member, member of a UTP Exchange, or person associated with any such member that seeks to have a transaction reviewed pursuant to paragraph (a)(1) hereof shall submit a written complaint to Nasdaq [Market Operations] *MarketWatch* in accordance with the following time parameters:

(i) For transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10 a.m., Eastern Time, complaints must be received by Nasdaq by 10:30 a.m., Eastern Time; and

(ii) For transactions occurring prior to 9:30 a.m., Eastern Time and at or after 10 a.m., Eastern Time, complaints must be received by Nasdaq within thirty minutes.

(B) through (E) No change.

(b) through (d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to reflect the administrative shift of certain responsibilities under NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890 from Nasdaq Market Operations to Nasdaq *MarketWatch* and to clarify members' obligations under NASD Rule 4625.

NASD Rules 4614, 4619, 4620, 4624, 5106, 6350, and 11890 all identify Market Operations as the Nasdaq department responsible for administration of the respective rules. Nasdaq has determined that, in order to ensure continued effective administration of these rules, it would be appropriate and desirable to transfer this responsibility to Nasdaq's *MarketWatch* department. As such, the proposed rule change to NASD Rules 4614, 4619, 4620, 4624, 5106, 6350, and 11890 would merely replace references to Market Operations with references to *MarketWatch.*

NASD Rule 4625 authorizes Nasdaq to seek certain information from members and provides specific examples of the types of information that Market Operations and *MarketWatch,*

respectively, may seek. In light of the shift of certain regulatory responsibilities from Market Operations to *MarketWatch,* as described in the preceding paragraph, the examples contained in NASD Rule 4625 need to be realigned accordingly, since certain types of information that previously would likely have been sought by Market Operations, would now be most likely needed by MarketWatch as it exercises its newly-acquired authority (which would shift to it from Market Operations) under the proposed rule change.

Furthermore, Nasdaq wishes to clarify the language in one of the examples contained in NASD Rule 4625. The example currently contained in paragraph (a)(2)(D) of NASD Rule 4625[7], refers to information relating to ''the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890.'' NASD Rule 5262 focuses on InterMarket trade-through complaints. Rules 5265 and 11890, however, make no reference to trade-through complaints but rather focus on the authority to adjust other transactions. As such, a clarification is desirable in order to identify specifically Nasdaq's authority to seek, and members' obligation to provide, information relating to ''the resolution of a trade-through complaint, *or other transaction*, pursuant to NASD Rules 5262, 5265, and 11890.''

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] including sections 15A(b)(2) and (6) of the Act,[9] which require, respectively, that (i) NASD be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the NASD and (ii) the rules of the NASD be 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. Nasdaq believes that, at this time, MarketWatch, rather than Market Operations, is the most appropriate department to handle certain regulatory responsibilities referenced above. As such, the organizational realignment and the corresponding proposed rule changes are consistent with the requirements of the Act. Furthermore, the proposed clarifying change in the language of the example currently contained in NASD Rule 4625(a)(2)(D) will make that rule's meaning more transparent, thereby helping advance the investor protection and public interest objectives of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to sections 19(b)(3)(A)(i) and (iii) of the Act[10] and Rules 19b–4(f)(1) and (3) thereunder[11] in that it, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, concerns solely with the administration of the self-regulatory organization.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on September 4, 2003, when Amendment No. 1 was filed.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–125 and should be submitted by October 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23550 Filed 9–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48468; File No. SR–NASD–2003–113]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Codify Nasdaq's Existing Authority To Implement a ''Quote-Only Period'' Before the Start of Trading in Initial Public Offerings on Nasdaq

September 10, 2003.

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 July 21, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange

[7] Under the proposed rule change, this example would be moved to paragraph (a)(1)(G) of NASD Rule 4625.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(2) and (6).

[10] 15 U.S.C. 78s(b)(3)(A)(i) and (iii).

[11] 17 CFR 240.19b–4(f)(1) and (3).

[12] *See* n.3, *supra.*

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by Nasdaq. On September 2, 2003, Nasdaq amended the proposed rule change.[3] Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice, as amended, 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

Nasdaq seeks to codify under NASD Rule 4120 Nasdaq's existing authority to implement a ''Quote-Only Period'' (''Period'') before the start of trading in initial public offerings (''IPOs'') on Nasdaq. The text of the proposed rule change is below. Proposed new language is in italics.

4120. Trading Halts

(a) Authority To Initiate Trading Halts

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in paragraph (b):

(1)–(6) No Change.

(*7*) *Halt trading in a security that is the subject of an Initial Public Offering on Nasdaq.*

(b) Procedure for Initiating a Trading Halt

(1)–(6) No Change.

(*7*) *A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute period during which market participants may enter quotes in that security in Nasdaq systems. If the inside market is not locked or crossed at the conclusion of that 15-minute period, Nasdaq will release the security for trading and terminate the halt. If the inside market is locked or crossed at the conclusion of the initial 15-minute period, Nasdaq will extend the halt for an additional 15 minutes during which quotations may be entered in Nasdaq systems. At the conclusion of the second 15-minute period, the halt shall be terminated and the security released for trading.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend NASD Rule 4120 to codify that NASD members or persons associated with NASD members are prohibited from executing trades, directly or indirectly, in a Nasdaq IPO prior to the conclusion of a quote-only period and the dissemination over the consolidated tape of a trade in that security on the Nasdaq Stock Market.

Section 12 of the Act[6] and Rule 12f–2 thereunder[7] prohibit off-exchange trading of IPOs of exchange-listed securities prior to the first trade on the listing exchange. This prohibition ensures the smooth functioning of the market during the initial trading of these IPOs that might otherwise experience volatility that may be observed in the opening of IPOs for secondary market trading. The prohibition also helps to ensure that markets are not open for trading when unusual circumstances may prevent such markets from remaining fair and orderly. Market participants are better able to digest and respond to market price indications before an IPO is released for trading, and thus to provide better information upon which to make trading decisions.

The Act does not extend this protection to over-the-counter listings such as those on Nasdaq. Therefore, in 1994, Nasdaq established a quotation-only time period for quoting participants to enter and adjust their first quotations for IPO securities.[8] Prior to the Period, NASD members may not disseminate quotes or trades in the IPO security. During the Period, NASD members are prohibited from effecting trades, either directly or indirectly, in the Nasdaq IPO security. Market participants may freely quote and trade once the Period has ended and Nasdaq has released the security for trading.

In 1998, Nasdaq modified and expanded the Period.[9] As amended and as is current practice, the initial Period lasts for 15 minutes. If the market is locked/crossed at the end of the first 15 minutes of the Period, Nasdaq extends the Period for an additional 15 minutes, after which trading in the security is released. Although Nasdaq monitors quotations for the entire 15 minutes, the determination whether to extend the Period is based solely on whether the market is locked or crossed at the end of that Period.

When the Commission approved Nasdaq's 1998 proposal to extend the Period, Nasdaq noted that its practice of imposing a Period is related to its authority to halt trading pursuant to NASD Rule 4120.[10] NASD Rule 4120 provides Nasdaq with authority to halt trading in securities in a number of circumstances in which Nasdaq deems a trading halt necessary to protect investors and the public interest. Prior to the adoption of the pilot amendment, the specific bases for initiating a trade halt focused primarily on ensuring that all investors have access to material news about an issuer. Nasdaq believes that the IPO Period shares the characteristics that are common to trade halts, including the presence of unusual market conditions and the possible lack of complete information upon which to base investment decisions.

Although Nasdaq's 1998 proposal referenced NASD Rule 4120, Nasdaq did not amend Rule 4120 at that time. Nasdaq believes that it is necessary and appropriate to codify Nasdaq's existing authority as established by Commission approval in 1998. Some market participants have expressed to Nasdaq their confusion or uncertainty about the Period. Therefore, Nasdaq submits this proposal to ensure that its authority is

[3] *See* August 29, 2003 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, and attachments (''Amendment No. 1''). Amendment No. 1 completely replaces and supersedes the original proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). The Commission considers the original filing to have satisfied Nasdaq's obligation to provide the Commission with notice of its intention to file the proposed rule change pursuant to Rule 19b–4(f)(6). Nasdaq asked the Commission to waive the 30-day operative delay.

[6] 15 U.S.C. 78*l*.

[7] 17 CFR 240.12f–2.

[8] *See* Securities Exchange Act Release 34254 (June 24, 1994), 59 FR 33808 (June 30, 1994)(SR–NASD–94–37).

[9] *See* Securities Exchange Act Release 40968 (January 22, 1999), 64 FR 4729 (January 29, 1999)(SR–NASD–98–98).

[10] *Id.* at footnote 4. Specifically, Nasdaq stated that the Quote Only Period ''like the objectives in [NASD] Rule 4120, is designed to ensure that the market is not open for trading when unusual circumstances may prevent such markets from remaining fair and orderly.''

clearly articulated in an approved rule, and that the implications of that rule be clearly understood by all market participants and investors. The proposal is designed to codify Nasdaq's existing authority and not to modify or expand it any manner.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] including section 15A(b)(6) of the Act,[12] which requires, among other things, that a registered national securities 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. The proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

In addition, section 15A(b)(11) of the Act[13] requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Nasdaq believes the proposal is designed to protect investors and to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[14] and Rule 19b-4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change,[16] 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.

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow Nasdaq to immediately codify its existing authority to implement a Period before the start of trading in IPOs. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

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 number SR-NASD–2003–113 and should be submitted by October 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23551 Filed 9–15–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(b)(11).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] The Commission considers the 60-day abrogation period to have commenced on September 2, 2003, the date Nasdaq filed Amendment No. 1.

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3543]

State of Florida

Palm Beach County and the contiguous counties of Broward, Glades, Hendry, and Martin Counties in the State of Florida constitute a disaster area due to damages caused by severe storms and tornadoes on August 7, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 10, 2003 and for economic injury until the close of business on June 9, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
Businesses with Credit Available Elsewhere	6.199
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.100
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.100

The number assigned to this disaster for physical damage is 354311 and the number for economic injury is 9W8700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 9, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–23599 Filed 9–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3544]

State of Indiana

As a result of the President's major disaster declaration on September 5, 2003, I find that Blackford, Boone, Clay, Delaware, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Jay, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Owen, Putnam, Randolph and Shelby Counties in the State of Indiana constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on August 26, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 4, 2003 and for economic injury until the close of business on June 7, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Bartholomew, Brown, Clinton, Daviess, Decatur, Fayette, Fountain, Howard, Huntington, Jackson, Knox, Lawrence, Miami, Martin, Parke, Rush, Sullivan, Tippecanoe, Tipton, Vigo, Wabash, Wayne and Wells in the State of Indiana; and Darke and Mercer counties in the State of Ohio.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
Businesses with Credit Available Elsewhere	6.199
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.100
Others (including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.100

The number assigned to this disaster for physical damage is 354406. For economic injury the number is 9W8800 for Indiana; and 9W8900 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 10, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–23598 Filed 9–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4491]

Bureau of Nonproliferation; Imposition of Lethal Military Equipment Assistance Prohibitions Against the Government of Russia and Waiver of These Assistance Prohibitions and Imposition of Discretionary Measures Against Russian Entity Tula KBP

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States Government has determined that the Government of Russia transferred lethal military equipment to countries determined by the Secretary of State to be state sponsors of terrorism. The United States Government further determined that, despite the transfers, furnishing assistance to the Government of Russia is important to the national interests of the United States. Further, notice is hereby given that it is the policy of the United States Government to deny all U.S. Government assistance to Tula Design Bureau of Instrument Building (Tula KBP), the entity that transferred the lethal military equipment to Iran.

EFFECTIVE DATE: September 16, 2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Ron Parson, Office of Export Controls and Conventional Arms Nonproliferation Policy, Bureau of Nonproliferation, Department of State, (202–647–0397).

SUPPLEMENTARY INFORMATION: Pursuant to provisions of Section 620H of the Foreign Assistance Act (FAA) of 1961, as amended (22 U.S.C. 2378) and Section 543 of the Foreign Operations, Export Financing, and Related Programs Appropriations, Division E, of the Consolidated Appropriations Resolution, 2003 (PL 108–7) and similar provisions in previous year Foreign Operations, Export Financing, and Related Programs Appropriations Acts, and Executive Order 12163, as amended, on August 25, the United States Government determined that the Government of Russia provided lethal military equipment to countries determined by the Secretary of State to be state sponsors of terrorism. Also on August 25 and pursuant to the aforementioned provisions of law, the United States Government determined that furnishing assistance restricted by these provisions to the Russian Government is important to the national interests of the United States.

As a matter of policy, United States Government assistance will be denied to Tula KBP for one year. The appropriate officials have been directed to implement additional measures against Tula KBP, consisting of denial of U.S. Government procurement for one year and denial of new licenses and other approvals for exports and imports of defense articles and services for one year.

Dated: September 10, 2003.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–23597 Filed 9–15–03; 8:45 am]

BILLING CODE 4710–27–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment on the Implications for U.S. Commercial Interests of the Accession to the European Union of Poland, Hungary, Czech Republic, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Cyprus and Malta (Accession Countries)

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comment.

SUMMARY: The Trade Policy Staff Committee gives notice that the Office of the United States Trade Representative (USTR) requests written submissions from the public concerning the implications for U.S. trade in goods and services of the anticipated May 2004 enlargement of the European Union (EU) to include Poland, Hungary, Czech Republic, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Cyprus and Malta (accession countries).

USTR and other agencies are currently engaged in an assessment of the potential impact on U.S. goods and services trade of the May 2004 enlargement of the EU and, in particular, of what compensation the EU may owe to the United States under WTO rules. Comments from the public in response to this notice will be incorporated into that assessment.

DATES: Submissions must be received on or before noon, October 16, 2003.

ADDRESSES: Submissions by Electronic Mail: *FR0094@ustr.gov.* Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee

(TPSC), Office of the USTR, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning this review should be addressed to Mark Mowrey, Deputy Assistant U.S. Trade Representative for Europe and the Mediterranean, Telephone (202) 395–3320.

SUPPLEMENTARY INFORMATION:

1. Background Information

On April 16, 2003, Poland, Hungary, Czech Republic, Slovakia, Slovenia, Latvia, Lithuania, Estonia, Malta and Cyprus signed a Treaty of Accession to the European Union. Following ratification of the Treaty by current EU member States and by the acceding countries, the acceding countries are expected to join the EU formally on May 1, 2004.

As part of the EU accession process, the accession countries are required to adopt the EU's common body of law or *acquis communautaire.* This will entail, *inter alia,* adoption by the accession countries of the EU's common external tariffs for goods imported from third countries, possible adoption or alteration by the accession countries of tariff rate quotas (TRQs) on various products (to make them compatible with EU TRQs), and harmonization of accession country regulatory requirements with EU regulations affecting the import of various good and services.

Under WTO rules, the EU must notify other WTO members of its intent to modify or withdraw market access commitments it has made on goods and services in order to expand the EU to include the accession countries. To date, the EU has not sent such notifications to the WTO, though the United States expects these to be made promptly.

Goods

Applicable GATT 1994 Procedures: If a WTO Member joining a customs union plans to raise a duty rate on a product which is bound in its WTO Schedule of concessions (a ''tariff concession''), it may renegotiate the tariff concession on that product under Article XXIV:6 of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994'') and the procedures of GATT 1994 Article XXVIII. This renegotiation may result in the provision of compensation (for example, reduction of duties on other products) that is no less favorable to trade than the original tariff concession.

Submissions: The public is encouraged to identify on a country-specific basis where the accession countries' adoption of the EU common external tariff will result in tariff increases or changes to tariff-rate quotas (TRQs) affecting U.S. commercial interests in the accession countries. The accession countries also will likely alter their TRQs to bring them more into line with EU TRQs. The public also is asked to evaluate the potential for: (1) Changes to current TRQs in terms of rates or volume of the TRQ; (2) the loss of existing TRQs in the accession countries; or (3) the imposition of new TRQs where they do not currently exist in the accession countries.

Current tariff rates for the EU and Malta and Cyprus can be obtained by calling the Department of Commerce's Trade Information Center at 1–800-USA–TRADE. Alternatively, the EU common external tariff schedule can be accessed at *http://www.trade.gov/td/tic/tariff/eu_schedule/index.htm.* Tariff rates for Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia and Slovenia can be obtained by calling the Central and Eastern Europe Business Information Center (CEEBIC) at (202) 482–2645.

Services

Applicable GATS Procedures: Article V, paragraph 5, of the *General Agreement on Trade in Services* (GATS) provides that if a WTO Member intends to modify or withdraw a specific GATS commitment as a result of joining an economic integration agreement such as a customs union, it must provide 90 days advance notice of such modification and follow the applicable procedures set out in GATS Article XXI. Paragraph 2 of Article XXI provides that WTO Members who believe they may be affected by the proposed modification of commitments can request negotiations with the modifying Member with the purpose of reaching an agreement on compensation for the proposed modification.

The accession countries' joining of the EU may also entail modification of the exiting lists of MFN exemptions maintained by the EU or the accession countries under GATS Article II. The United States maintains that the EU must engage through a separate WTO process (namely a waiver process under Article IX of the Agreement Establishing the WTO) with its partners in cases where modifications to MFN exemption lists are contemplated. However, comments from the public on anticipated trade impacts implied by a consolidation of the existing accession country and EU MFN exemptions lists are also solicited through this notice.

Submissions: The public is advised to examine the existing GATS schedules of specific commitments and lists of most-favored-nation exemptions of the EU in comparison with those of Poland, Hungary, Czech Republic, Slovakia, Slovenia, Latvia, Lithuania, Estonia, Malta and Cyprus to determine whether changes implied through consolidation of the schedules and lists would adversely impact U.S. commercial interests. The existing schedules and lists are accessible through the WTO's Services Database Web site, *http://tsdb.wto.org/wto/WTOHomepublic.htm.* From that site, click on ''Pre-defined Reports'' and then ''All Sectors in Each Country.''

Other regulatory measures

Adoption of the EU *acquis communautaire* by the accession countries will entail adoption of the EU's standards, regulations and conformity assessment procedures, including sanitary and phytosanitary requirements, testing, certification, labeling requirements, *etc.* The accession countries will also be obligated to impose import restrictions, quantitative restrictions and antidumping orders similar to those of the EU. The public is encouraged to comment where appropriate on how the introduction of these types of regulatory measures would affect U.S. commercial interests.

Supportive Data and Recommendations for Compensation

All submissions should describe the product or service in question, and in the case of products, should include the Harmonized System tariff heading(s). Submissions should describe the current market access for the products or services, including value and quantity of exports, any existing problems, and should identify changes that are anticipated upon accession countries' entry into the EU.

Submissions may also include recommendations for appropriate compensation the United States might seek for instances of diminished market access. These recommendations could include such items as reductions in the EU common external tariff on goods, improvements to EU market access commitments on goods and services, or other changes in the EU trade regime for goods and services.

2. Requirements for Submissions

To ensure prompt and full consideration of responses, USTR

strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0094@ustr.gov.* Persons making submissions by e-mail should use the following subject line: ''May 2004 EU Enlargement.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the character ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitted information. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written submissions will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6 must be clearly marked ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries will be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairperson, Trade Policy Staff Committee.

[FR Doc. 03–23571 Filed 9–15–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 9, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

Dates: Written comments should be received on or before October 16, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0140.

Form Number: IRS Forms 2210 and 2210–F.

Type of Review: Extension.

Title: Underpayment of Estimated Tax by Individuals, Estates, and Trusts (2210); and Underpayment of Estimated Tax by Farmers and Fishermen (2210–F).

Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. These forms are used by taxpayers to determine whether they are subject to the penalty for failure to pay estimated tax. These forms are used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 900,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Short method	Regular method
Recordkeeping	19 min	13 min.
Learning about the law or the form	15 min	31 min.
Preparing the form	39 min	2 hr., 03 min.
Copying, assembling, and sending the form to the IRS	20 min	45 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,519,500 hours.

OMB Number: 1545–0142.

Form Number: IRS Form 2220.

Type of Review: Extension.

Title: Underpayment of Estimated Tax by Corporations.

Description: Form 2220 is used by corporations to determine whether they are subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty. The IRS uses Form 2220 to determine if the penalty was correctly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 778,080.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law and the form	Preparing and sending the form to the IRS
2220	32 hr., 31 min	1 hr., 5 min	1 hr., 40 min.
2220, Schedule A, Part I	22 hr., 43 min.	0 min.	22 min.
2220, Schedule A, Part II	10 hr., 31 min	18 min	28 min.
2220, Schedule A, Part III	6 hr., 13 min	0 min	06 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 26,183,298 hours.

OMB Number: 1545–0393.

Form Number: Letter 109C.

Type of Review: Extension.

Title: Return Requesting Refund Unlocatable or Not Filed; Send Copy.

Description: The code requires tax returns to be filed. It also authorizes IRS to refund any overpayment of tax. If a taxpayer inquires about their non-receipt or refund and no return is found, this letter is sent requesting the taxpayer to file another return.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 18,223.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,513 hours.

OMB Number: 1545–1680.

Form Number: IRS Form 706–D.

Type of Review: Extension.

Title: United States Additional Estate Tax Return Under Code Section 2057.

Description: Form 706–D is used by individuals to compute and pay the additional taxes due under Code section 2057. IRS uses the information to determine that the taxes have been properly computed.

Respondents: Individuals or households.

Estimated Number of Respondents: 180.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—39 min.
Learning about the law or the form—45 min.
Preparing the form—56 min.
Copying, assembling, and sending the form to the IRS—34 min.

Frequency of Response: Other (Section 2057 taxable event).

Estimated Total Reporting/Recordkeeping Burden: 530 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–23516 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Offices 2003 Performance/Bonus Review Board

August 28, 2003.

AGENCY: Treasury Department.

ACTION: Notice of Members of the Departmental Offices Performances/Bonus Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance/Bonus Review Board. The purpose of this Board is to review and make recommendations concerning proposed Performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions.

Composition of Departmental Board: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Boards members are as follows:

Adams, Timothy, Chief of Staff
Bezdek, Roger, Senior Advisor for Fiscal Management
Cameron Jr., Arthur, DAS (Appropriations & Management)
Carleton, Norman, Director, Office of Federal Finance & Policy Analysis
Conteras, Rebecca, Human Capital Officer
Demarco, Edward, Director, Office of Government Sponsored Enterprises Policy
Dohner, Robert, Senior Advisor to DAS (International Monetary & Financial Policy)
Fall III, James, DAS (Technical Assistance Policy)
Froehlich, Carl, Director, Office of Strategic Planning
Gerardi, Geraldine, Director for Business Taxation
Hammond, Donald, Fiscal Assistant Secretary
Hudson, Barry, Deputy Chief Financial Officer
Kiefer, Donald, Director, Office of Tax Analysis
Lee, Nancy, DAS (Eurasia & Middle East)
Lingebach, James, Director, Accounting & Internal Control
Lingrell, David, Director, Treasury Building & Annex Restoration & Renovation Building Program
Loevinger, David, Director, Office of East Asian Nations
Lyon, Andrew, DAS (Tax Analysis)
Mathiasen, Karen, Director, Office of Central & Eastern European Nations
McFadden, William, Senior Policy Advisor
Monroe, David, Director, Office of Cash and Debt Management
Murden, William, Director, Office of International Banking & Security Markets
Newcomb, Robert, Director, Office of Foreign Assets
Nunns, James, Director for Individual Taxation
Platt, Joel, Director for Revenue Estimating
Randolph, William, Director for International Taxation
Reid, Robert, DAS for Accounting Operations
Romey, Michael, Special Assistant to the Secretary (National Security)
Schuerch, William, Deputy Assistant Secretary (International Development, Debt & Environment Policy)
Shaw, Mary Beth, Director, DC Pensions Project Office
Sills, Gay, Director, Office of International Investment
Smith III, George, Director, Office of Technical Assistance
Sobel, Mark, Deputy Assistant Secretary (International Monetary & Financial Policy)
Solomon, Eric, DAS (Regulatory Affairs)
Stedman, Louellen, Director, Office International Monetary Affairs
Tvardek, Steven, Director, Office of Trade Finance
Warthin, Thomas, Director, Office of Financial Services Negotiations
Wright Jr., Earl, Workforce Management

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Cathy Hickson-Smith, Department of the Treasury, Office of Human Resources, HR Management Specialist, 15th and Pennsylvania Ave., NW., Washington,DC 20220, Telephone: 202–622–1690.

This notice does not meet the Department's criteria for significant Regulations.

Catherine Hickson-Smith,

Human Resources Management Specialist.

[FR Doc. 03–23517 Filed 9–15–03; 8:45 am]

BILLING CODE 4811–20–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8082

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 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

DATES: Written comments should be received on or before November 17, 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 at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).

OMB Number: 1545–0790.

Form Number: 8082.

Abstract: A partner, S corporation shareholder, or the holder of a residual interest in a real estate mortgage investment conduit (REMIC) generally must report items consistent with the way they were reported by the partnership or S corporation on Schedule K–1 or by the REMIC on Schedule Q. Also, an estate or domestic trust beneficiary, or a foreign trust owner or beneficiary, is subject to the consistency reporting requirements for returns filed after August 5, 1997. Form 8082 is used to notify the IRS of any inconsistency between the tax treatment of items reported by the partner, shareholder, etc., and the way the pass-through entity treated and reported the same item on its 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: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 10,700.

Estimated Time Per Respondent: 7 hr., 9 min.

Estimated Total Annual Burden Hours: 76,557.

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: September 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23603 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–GS(D)

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 706–GS(D), Generation-Skipping Transfer Tax Return for Distributions.

DATES: Written comments should be received on or before November 17, 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 at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return for Distributions.

OMB Number: 1545–1144.

Form Number: 706–GS(D).

Abstract: Form 706–GS(D) is used by persons who receive taxable distributions from a trust to compute and report the generation-skipping transfer tax imposed by Internal Revenue Code section 2601. IRS uses the information to verify that the tax has been properly computed.

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.

Estimated Time Per Respondent: 1 hour, 5 minutes.

Estimated Total Annual Burden Hours: 1,080.

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: September 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23604 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306

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 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

DATES: Written comments should be received on or before November 17, 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, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

OMB Number: 1545–0390.

Form Number: 5306.

Abstract: This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by banks and insurance companies that want to establish approved prototype individual retirement accounts or annuities. The data collected are used to determine if the individual retirement account trust or annuity contract meets the requirements of Code section 408(a), 408(b), or 408(c) so that the IRS may issue an approval letter.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 13 hr., 8 min.

Estimated Total Annual Burden Hours: 7,878.

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: September 10, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23605 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–45

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 Notice 97–45, Highly Compensated Employee Definition.

DATES: Written comments should be received on or before November 17, 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 notice should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Highly Compensated Employee Definition.

OMB Number: 1545–1550.

Notice Number: Notice 97–45.

Abstract: Notice 97–45 provides guidance on the definition of highly compensated employee (HCE) within the meaning of section 414(q) of the Internal Revenue Code, as simplified by section 1431 of the Small Business Job Protection Act of 1996, including an employer's option to make a top-paid group election under section 414(q)(1)(B)(ii). The notice requires qualified retirement plans that contain a definition of HCE to be amended to reflect the statutory changes to section 414(q).

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 218,683.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 65,605.

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: September 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23613 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582–CR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582–CR, Passive Activity Credit Limitations.

DATES: Written comments should be received on or before November 17, 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 at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Credit Limitations.

OMB Number: 1545–1034.

Form Number: 8582–CR.

Abstract: Under Internal Revenue Code section 469, credits from passive activities, to the extent they do not exceed the tax attributable to net passive income, are not allowed, Form 8582–CR is used to figure the passive activity credit allowed and the amount of credit to be reported on the 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, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 900,000.

Estimated Time Per Respondent: 7 hr., 57 min.

Estimated Total Annual Burden Hours: 7,152,300.

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: September 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23614 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9117

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 9117, Excise Tax Program Order Blank for Forms and Publications.

DATES: Written comments should be received on or before November 17, 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 form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Program Order Blank for Forms and Publications.

OMB Number: 1545–1096.

Form Number: 9117.

Abstract: Form 9117 allows taxpayers who must file Form 720 returns a systemic way to order additional tax forms and informational publications.

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: Businesses or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 500.

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: September 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23615 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedures 97–36, 97–38, 97–39, and 2002–9

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 Revenue Procedures 97–36, 97–38, 97–39, and 2002–9, Changes in Methods of Accounting.

DATES: Written comments should be received on or before November 17, 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 revenue procedures should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Methods of Accounting.

OMB Number: 1545–1551.

Revenue Procedure Numbers: Revenue Procedures 97–36, 97–38, 97–39, and 2002–9.

Abstract: The information collected in the four revenue procedures is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of the change.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

Estimated Number of Respondents: 23,545.

Estimated Time Per Respondent: 9 hours, 27 minutes.

Estimated Total Annual Burden Hours: 222,454.

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: September 10, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–23616 Filed 9–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Portland, OR

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating six acres of land at the Department of Veterans Affairs Medical Center, Vancouver, Washington, for an enhanced-use leasing development. The Department intends to enter into a 75-year lease of real property with a lessee/developer who will finance, design, develop, maintain and manage a community and health services facility, at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Section 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: March 24, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–23512 Filed 9–15–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 179

Tuesday, September 16, 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.

DEPARTMENT OF LABOR

29 CFR Part 31

RIN 1291–AA31

Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

Correction

In rule document 03–21140 beginning on page 51334 in the issue of Tuesday, August 26, 2003, make the following corrections:

§ 31.6 [Corrected]

1. On page 51367, in § 31.6, in the table, in the column titled ''Remove'', in the eighth line, ''that program that'' should read, ''that program''.

2. On the same page, in the same section, in the same table, in the column titled ''Add'', in the fourth line, ''assistance'' should read, ''that assistance''.

[FR Doc. C3–21140 Filed 9–15–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 16, 2003

Part II

Department of Housing and Urban Development

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4869–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2004

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revised contract rent Annual Adjustment Factors.

SUMMARY: This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries for calendar months commencing after the date of publication of this notice. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: September 16, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, (202) 708–0477, can respond to questions relating to use of AAFs in the Section 8 Project-based Certificate and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234, for questions regarding the Single Room Occupancy Moderate Rehabilitation program; and Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, (202) 708–3000, for questions relating to all other Section 8 programs. Marie L. Lihn, Economic and Market Analysis Division, Office of Policy Development and Research, (202) 708–0590, is the contact for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. (These are not toll-free numbers.) The mailing address for above persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0001. Hearing- or speech-impaired persons may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The sections of this notice explain how AAFs are applied to various Section 8 programs:

- Section 1–How AAFs are used in particular Section 8 Project-based Assistance programs.
- Section 2—When and how to apply the statutory 1 percent reduction to AAFs.
- Section 3—Procedures for adjusting rent in three Section 8 program categories.
- Section 4—How to find the applicable AAF.
- Section 5—Geographic Areas.
- Section 6—How HUD calculates AAFs.

I. Applying AAFs to Various Section 8 Programs

AAFs established by this notice are used to adjust contract rents for units assisted in certain Section 8 Housing Assistance Payments programs, during the original (*i.e.*, pre-renewal) term of the housing assistance payments (HAP) contract. Three categories of Section 8 programs use the AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-based Certificate (PBC) program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the voucher program, or to determine renewal rents or budget-based rents.

- *Renewal Rents.* AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are determined by applying a state-by-state operating cost adjustment factor (OCAF) published by HUD.
- *Voucher Program.* AAFs are not used for any purpose in the Section 8 voucher program.
- *Budget-based Rents.* AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) or under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.
- *Certificate Program.* In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in the tenant-based certificate program. However, this program has now been terminated. All tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher program. AAFs are still used for adjustment of contract rent for outstanding HAP contracts under the project-based certificate program.

How AAF Is Applied in the Moderate Rehabilitation Programs

Under the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the pre-adjustment contract rent.

II. When To Use Reduced AAF (From AAF Table 2)

In accordance with section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

—For all tenancies assisted in the Section 8 PBC program.

—In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area (42 U.S.C. 1437f(c)(2)(A)).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2, of this notice. Each AAF in Table 2 has been computed by subtracting 0.01 from the annual adjustment factor in Table 1.

III. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices. The notices are issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

—The Section 8 New Construction and Substantial Rehabilitation programs (including the Section 8 State Agency program); and the Moderate Rehabilitation programs (including the Moderate Rehabilitation Single Room Occupancy program).

—The Section 8 LM Program (24 CFR part 886, subpart A) and the PD program (24 CFR part 886, subpart C).

—The Section 8 PBC program.

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.*, unless the contract rent is reduced by comparability):

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.

—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

—The Table 2 AAF is always used. The Table 1 AAF is not used.

—The Table 2 AAF is always applied before determining comparability (rent reasonableness).

—Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

IV. How To Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2, of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent—*i.e.*, where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent—*i.e.*, where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

• Determine whether Table 1 or Table 2 is applicable.

• In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.

• Determine whether the highest cost utility is or is not included in contract rent for the contract unit.

• If highest cost utility is included, select the AAF from the column for ''highest cost included.'' If highest cost utility is not included, select the AAF from the column for ''utility excluded.''

V. AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

—For the metropolitan parts of the ten HUD regions exclusive of CPI areas;

—For the nonmetropolitan parts of these regions; and

—For separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan area	Deleted counties
Chicago, IL	DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN.	Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX	Henderson County.
Flagstaff, AZ–UT	Kane County, Utah
New Orleans, LA	St. James Parish.
Washington, DC–VA–MD–WV.	Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George, and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. The separate AAFs and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD

regional metropolitan or nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated HUD region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each state. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska nonmetropolitan AAFs.

VI. How HUD Calculates AAFs

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The ''Highest Cost Utility Included'' column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The ''Highest Cost Utility Excluded'' column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (*i.e.*, paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant.

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Tables.

Dated: September 9, 2003.

Mel Martinez,

Secretary.

BILLING CODE 4210–62–P

SCHEDULE C - TABLE 1 - 2004 CONTRACT RENT AAFS 07/15/03

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.017	1.030	New England Nonmetropolitan	1.014	1.028
New York/New Jersey Metropolitan	1.002	1.018	New York/New Jersey Nonmetropolitan	1.004	1.020
Mid-Atlantic Metropolitan	1.007	1.020	Mid-Atlantic Nonmetropolitan	1.000	1.016
Southeast Metropolitan	1.003	1.014	Southeast Nonmetropolitan	1.000	1.014
Midwest Metropolitan	1.007	1.015	Midwest Nonmetropolitan	1.000	1.012
Southwest Metropolitan	1.003	1.018	Southwest Nonmetropolitan	1.000	1.009
Great Plains Metropolitan	1.009	1.016	Great Plains Nonmetropolitan	1.000	1.011
Rocky Mountains Metropolitan	1.016	1.018	Rocky Mountains Nonmetropolitan	1.011	1.016
Pacific/Hawaii Metropolitan	1.035	1.037	Pacific/Hawaii Nonmetropolitan	1.028	1.035
Northwest/Alaska Metropolitan	1.022	1.017	Northwest/Alaska Nonmetropolitan	1.021	1.016
Akron, OH PMSA	1.003	1.040	Anchorage, AK MSA	1.051	1.057
Ann Arbor, MI PMSA	1.038	1.034	Atlanta, GA MSA	1.018	1.030
Atlantic--Cape May, NJ PMSA	1.024	1.036	Baltimore, MD PMSA	1.053	1.066
Bergen--Passaic, NJ PMSA	1.040	1.051	Berkeley County MSA*	1.049	1.068
Boston, MA--NH PMSA	1.057	1.083	Boulder--Longmont, CO PMSA	1.022	1.040
Brazoria, TX PMSA	1.011	1.047	Bremerton, WA PMSA	1.026	1.028
Bridgeport, CT PMSA	1.037	1.055	Brockton, MA PMSA	1.054	1.084
Brown County MSA*	1.008	1.030	Chicago, IL PMSA	1.025	1.041
Cincinnati, OH--KY--IN PMSA	1.016	1.026	Clarke County MSA*	1.050	1.067
Cleveland--Lorain--Elyria, OH PMSA	1.005	1.039	Culpeper County MSA*	1.051	1.067
Dallas, TX PMSA	1.024	1.041	Danbury, CT PMSA	1.038	1.054
DeKalb County MSA*	1.021	1.044	Denver, CO PMSA	1.020	1.040
Detroit, MI PMSA	1.039	1.033	Dutchess County, NY PMSA	1.039	1.052
Fitchburg--Leominster, MA PMSA	1.054	1.084	Flint, MI PMSA	1.040	1.033
Fort Lauderdale, FL PMSA	1.037	1.048	Fort Worth--Arlington, TX PMSA	1.022	1.041
Gallatin County MSA*	1.006	1.031	Galveston--Texas City, TX PMSA	1.008	1.047
Gary, IN PMSA	1.016	1.048	Grant County MSA*	1.008	1.030
Greeley, CO PMSA	1.019	1.040	Grundy County MSA*	1.017	1.047
Hagerstown, MD PMSA	1.051	1.067	Hamilton--Middletown, OH PMSA	1.014	1.027
Henderson County MSA*	1.009	1.041	HAWAII	1.017	1.021
Houston, TX PMSA	1.017	1.046	Jefferson County MSA*	1.048	1.068
Jersey City, NJ PMSA	1.040	1.051	Kankakee, IL PMSA	1.014	1.049
Kansas City, MO--KS MSA	1.018	1.040	Kendall County MSA*	1.021	1.043
Kenosha, WI PMSA	1.020	1.045	King George County MSA*	1.049	1.068
Lawrence, MA--NH PMSA	1.052	1.085	Los Angeles--Long Beach, CA PMSA	1.056	1.057
Lowell, MA--NH PMSA	1.055	1.083	Manchester, NH PMSA	1.054	1.084
Miami, FL PMSA	1.036	1.048	Middlesex--Somerset--Hunterdon, NJ PMSA	1.040	1.052
Milwaukee--Waukesha, WI PMSA	1.026	1.038	Minneapolis--St. Paul, MN--WI MSA	1.043	1.056
Monmouth--Ocean, NJ PMSA	1.038	1.054	Nashua, NH PMSA	1.055	1.084
Nassau--Suffolk, NY PMSA	1.038	1.053	New Bedford, MA PMSA	1.054	1.084
New Haven--Meriden, CT PMSA	1.038	1.053	New York, NY PMSA	1.041	1.050
Westchester County MSA*	1.041	1.049	Newark, NJ PMSA	1.040	1.052
Newburgh, NY--PA PMSA	1.039	1.052	Oakland, CA PMSA	1.034	1.038
Ohio County MSA*	1.009	1.029	Olympia, WA PMSA	1.026	1.028
Orange County, CA PMSA	1.056	1.057	Pendleton County MSA*	1.009	1.029

SCHEDULE C - TABLE 1 - 2004 CONTRACT RENT AAFS 07/15/03

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
Philadelphia, PA--NJ PMSA	1.024	1.036	Pittsburgh, PA MSA	1.011	1.047
Portland--Vancouver, OR--WA PMSA	1.031	1.016	Portsmouth--Rochester, NH--ME PMSA	1.054	1.084
Racine, WI PMSA	1.026	1.038	Riverside--San Bernardino, CA PMSA	1.056	1.057
St. Louis, MO--IL MSA	1.006	1.035	Salem, OR PMSA	1.033	1.016
San Diego, CA MSA	1.073	1.080	San Francisco, CA PMSA	1.035	1.038
San Jose, CA PMSA	1.035	1.038	Santa Cruz--Watsonville, CA PMSA	1.033	1.038
Santa Rosa, CA PMSA	1.033	1.038	Seattle--Bellevue--Everett, WA PMSA	1.026	1.028
Stamford--Norwalk, CT PMSA	1.040	1.052	Tacoma, WA PMSA	1.026	1.028
Tampa--St. Petersburg--Clearwater, FL MSA	1.049	1.054	Trenton, NJ PMSA	1.039	1.052
Vallejo--Fairfield--Napa, CA PMSA	1.032	1.038	Ventura, CA PMSA	1.056	1.057
Vineland--Millville--Bridgeton, NJ PMSA	1.022	1.037	Warren County MSA*	1.051	1.067
Washington, DC--MD--VA--WV PMSA	1.056	1.064	Waterbury, CT PMSA	1.038	1.053
Wilmington--Newark, DE--MD PMSA	1.025	1.036	Worcester, MA--CT PMSA	1.054	1.084

SCHEDULE C - TABLE 2 - 2004 CONTRACT RENT AAFS 07/15/03

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
New England Metropolitan	1.007	1.020	New England Nonmetropolitan	1.004	1.018
New York/New Jersey Metropolitan	1.000	1.008	New York/New Jersey Nonmetropolitan	1.000	1.010
Mid-Atlantic Metropolitan	1.000	1.010	Mid-Atlantic Nonmetropolitan	1.000	1.006
Southeast Metropolitan	1.000	1.004	Southeast Nonmetropolitan	1.000	1.004
Midwest Metropolitan	1.000	1.005	Midwest Nonmetropolitan	1.000	1.002
Southwest Metropolitan	1.000	1.008	Southwest Nonmetropolitan	1.000	1.000
Great Plains Metropolitan	1.000	1.006	Great Plains Nonmetropolitan	1.000	1.001
Rocky Mountains Metropolitan	1.006	1.008	Rocky Mountains Nonmetropolitan	1.001	1.006
Pacific/Hawaii Metropolitan	1.025	1.027	Pacific/Hawaii Nonmetropolitan	1.018	1.025
Northwest/Alaska Metropolitan	1.012	1.007	Northwest/Alaska Nonmetropolitan	1.011	1.006
Akron, OH PMSA	1.000	1.030	Anchorage, AK MSA	1.041	1.047
Ann Arbor, MI PMSA	1.028	1.024	Atlanta, GA MSA	1.008	1.020
Atlantic--Cape May, NJ PMSA	1.014	1.026	Baltimore, MD PMSA	1.043	1.056
Bergen--Passaic, NJ PMSA	1.030	1.041	Berkeley County MSA*	1.039	1.058
Boston, MA--NH PMSA	1.047	1.073	Boulder--Longmont, CO PMSA	1.012	1.030
Brazoria, TX PMSA	1.001	1.037	Bremerton, WA PMSA	1.016	1.018
Bridgeport, CT PMSA	1.027	1.045	Brockton, MA PMSA	1.044	1.074
Brown County MSA*	1.000	1.020	Chicago, IL PMSA	1.015	1.031
Cincinnati, OH--KY--IN PMSA	1.006	1.016	Clarke County MSA*	1.040	1.057
Cleveland--Lorain--Elyria, OH PMSA	1.000	1.029	Culpeper County MSA*	1.041	1.057
Dallas, TX PMSA	1.014	1.031	Danbury, CT PMSA	1.028	1.044
DeKalb County MSA*	1.011	1.034	Denver, CO PMSA	1.010	1.030
Detroit, MI PMSA	1.029	1.023	Dutchess County, NY PMSA	1.029	1.042
Fitchburg--Leominster, MA PMSA	1.044	1.074	Flint, MI PMSA	1.030	1.023
Fort Lauderdale, FL PMSA	1.027	1.038	Fort Worth--Arlington, TX PMSA	1.012	1.031
Gallatin County MSA*	1.000	1.021	Galveston--Texas City, TX PMSA	1.000	1.037
Gary, IN PMSA	1.006	1.038	Grant County MSA*	1.000	1.020
Greeley, CO PMSA	1.009	1.030	Grundy County MSA*	1.007	1.037
Hagerstown, MD PMSA	1.041	1.057	Hamilton--Middletown, OH PMSA	1.004	1.017
Henderson County MSA*	1.000	1.031	HAWAII	1.007	1.011
Houston, TX PMSA	1.007	1.036	Jefferson County MSA*	1.038	1.058
Jersey City, NJ PMSA	1.030	1.041	Kankakee, IL PMSA	1.004	1.039
Kansas City, MO--KS MSA	1.008	1.030	Kendall County MSA*	1.011	1.033
Kenosha, WI PMSA	1.010	1.035	King George County MSA*	1.039	1.058
Lawrence, MA--NH PMSA	1.042	1.075	Los Angeles--Long Beach, CA PMSA	1.046	1.047
Lowell, MA--NH PMSA	1.045	1.073	Manchester, NH PMSA	1.044	1.074
Miami, FL PMSA	1.026	1.038	Middlesex--Somerset--Hunterdon, NJ PMSA	1.030	1.042
Milwaukee--Waukesha, WI PMSA	1.016	1.028	Minneapolis--St. Paul, MN--WI MSA	1.033	1.046
Monmouth--Ocean, NJ PMSA	1.028	1.044	Nashua, NH PMSA	1.045	1.074
Nassau--Suffolk, NY PMSA	1.028	1.043	New Bedford, MA PMSA	1.044	1.074
New Haven--Meriden, CT PMSA	1.028	1.043	New York, NY PMSA	1.031	1.040
Westchester County MSA*	1.031	1.039	Newark, NJ PMSA	1.030	1.042
Newburgh, NY--PA PMSA	1.029	1.042	Oakland, CA PMSA	1.024	1.028
Ohio County MSA*	1.000	1.019	Olympia, WA PMSA	1.016	1.018
Orange County, CA PMSA	1.046	1.047	Pendleton County MSA*	1.000	1.019

SCHEDULE C - TABLE 2 - 2004 CONTRACT RENT AAFS 07/15/03

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED		HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
Philadelphia, PA--NJ PMSA	1.014	1.026	Pittsburgh, PA MSA	1.001	1.037
Portland--Vancouver, OR--WA PMSA	1.021	1.006	Portsmouth--Rochester, NH--ME PMSA	1.044	1.074
Racine, WI PMSA	1.016	1.028	Riverside--San Bernardino, CA PMSA	1.046	1.047
St. Louis, MO--IL MSA	1.000	1.025	Salem, OR PMSA	1.023	1.006
San Diego, CA MSA	1.063	1.070	San Francisco, CA PMSA	1.025	1.028
San Jose, CA PMSA	1.025	1.028	Santa Cruz--Watsonville, CA PMSA	1.023	1.028
Santa Rosa, CA PMSA	1.023	1.028	Seattle--Bellevue--Everett, WA PMSA	1.016	1.018
Stamford--Norwalk, CT PMSA	1.030	1.042	Tacoma, WA PMSA	1.016	1.018
Tampa--St. Petersburg--Clearwater, FL MSA	1.039	1.044	Trenton, NJ PMSA	1.029	1.042
Vallejo--Fairfield--Napa, CA PMSA	1.022	1.028	Ventura, CA PMSA	1.046	1.047
Vineland--Millville--Bridgeton, NJ PMSA	1.012	1.027	Warren County MSA*	1.041	1.057
Washington, DC--MD--VA--WV PMSA	1.046	1.054	Waterbury, CT PMSA	1.028	1.043
Wilmington--Newark, DE--MD PMSA	1.015	1.026	Worcester, MA--CT PMSA	1.044	1.074

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crensha' Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
MSA Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Bristol Bay, Denali, Dillingham, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Lake & Peninsula, Matanuska-Susitna, Nome, North Slope, Northwest Arctic, Pr. Wales-Outer Ketchikan, Sitka, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukatat, Yukon-Koyukuk.

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
PMSA Los Angeles-Long Beach, CA:	Los Angeles
PMSA Oakland, CA:	Alameda, Contra Costa
PMSA Orange County, CA:	Orange
PMSA Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA San Diego, CA:	San Diego
PMSA San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA San Jose, CA:	Santa Clara
PMSA Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA Santa Rosa, CA:	Sonoma
PMSA Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

COLORADO (ROCKY MOUNTAIN)

CPI AREAS:	COUNTIES
PMSA Boulder-Longmont, CO:	Boulder
PMSA Denver, CO:	Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO:	Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Mesa, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS:	COUNTIES
PMSA Bridgeport, CT	
Fairfield County part:	Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
New Haven County part:	Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town
PMSA Danbury, CT	
Fairfield County part:	Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part:	Bridgewater town, New Milford town, Roxbury town, Washington town
PMSA New Haven-Meriden, CT	
Middlesex County part:	Clinton town, Killingworth town
New Haven County part:	Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town
PMSA Stamford-Norwalk, CT	
Fairfield County part:	Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
PMSA Waterbury, CT	
Litchfield County part:	Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part:	Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town
PMSA Worcester, MA-CT	
Windham County part:	Thompson town

METROPOLITAN COUNTIES

Hartford County part:	Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part:	Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part:	Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part:	Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part:	Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part:	Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES

Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS:	COUNTIES
PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Miami-Dade
MSA Tampa-St. Petersburg-Clearwater, FL	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS:	COUNTIES
*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

HAWAII (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS:	COUNTIES
*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

IOWA (Cont.)

Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES

Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES

Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES

Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES

Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES

Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES

Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Portsmouth-Rochester, NH-ME

York County part:	Berwick town, Eliot town, Kittery town, South Berwick town, York town

METROPOLITAN COUNTIES

Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach

NONMETROPOLITAN COUNTIES

Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Washington

Androscoggin County part:	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part:	Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part:	Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part:	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part:	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Baltimore, MD:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD:	Washington
*Washington, DC-MD-VA:	Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD:	Cecil

METROPOLITAN COUNTIES

Allegany

NONMETROPOLITAN COUNTIES

Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES

Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES

Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS:	COUNTIES
MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL:	Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH
Rockingham County part: Seabrook town, South Hampton town

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county pt: Pelham town

PMSA Manchester, NH
Hillsborough county pt: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county pt: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Atlantic-Cape May, NJ:	Atlantic, Cape May
PMSA Bergen-Passaic, NJ:	Bergen, Passaic
PMSA Jersey City, NJ:	Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ:	Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ:	Monmouth, Ocean
PMSA Newark, NJ:	Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ:	Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ:	Mercer
PMSA Vineland-Millville-Bridgeton, NJ:	Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

OHIO (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES
Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Newburgh, NY-PA:	Pike
PMSA Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part:	Jamestown town, Little Compton town, Tiverton town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Gloeester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES

Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES

Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES

Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES

Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES

Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES
Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES
Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS:	COUNTIES
*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Bremerton, WA:	Kitsap
PMSA Olympia, WA:	Thurston
PMSA Portland-Vancouver, OR-WA:	Clark
PMSA Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA Tacoma, WA:	Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Kenosha, WI:	Kenosha
PMSA Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA Racine, WI:	Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

[FR Doc. 03–23515 Filed 9–15–03; 8:45 am]
BILLING CODE 4210–62–C

Federal Register

Tuesday,
September 16, 2003

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 36 and 53

Federal Acquisition Regulation; Elimination of Standard Form 1417; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 36, and 53

[FAR Case 2002–017]

RIN 9000–AJ73

Federal Acquisition Regulation; Elimination of Standard Form 1417

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to eliminate the use of the Standard Form (SF) 1417.

DATES: Interested parties should submit comments in writing on or before November 17, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to *farcase.2002-017@gsa.gov.*

Please submit comments only and cite FAR case 2002–017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2002–017.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR Subparts 1.1, 36.2, 36.7, 53.2, and 53.3, deleting the prescription for the use of the SF 1417, Pre-Solicitation Notice (Construction Contract). The proposed rule eliminates the use of this form in contracts for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

The use of the form has become unnecessary because contracting officers are required to provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at *http://www.fedbizopps.gov* pursuant to FAR 5.204. The proposed FAR change to eliminate the SF 1417 complements efforts to increase reliance on electronic business practices in procurement in furtherance of the Administration's commitment to create a citizen-centric E-Government, as outlined in the President's Management Agenda.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed amendments are not imposing any additional burden on small business. Small businesses are already aware of the publicizing medium the Government uses via the Internet and have made the necessary adaptation to keep abreast of business opportunities disseminated therein. The use of electronic commerce/electronic data interchange has become the principal medium for publicizing business opportunities in the Federal Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties.

The Councils will consider comments from small entities concerning the affected FAR parts 1, 36, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 36, and 53

Government procurement.

Dated: September 9, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 36, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 36, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segment ''SF 1417'' and its corresponding OMB Control Number ''9000–0037''.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.213–2 [Amended]

3. Amend section 36.213–2 in the first sentence of paragraph (a) by removing ''send'' and adding ''issue'' in its place, and removing ''to prospective bidders''; and in paragraph (b) by removing paragraph (b)(6) and redesignating paragraphs (b)(7), (b)(8), and (b)(9) as (b)(6), (b)(7), and (b)(8), respectively.

36.701 [Amended]

4. Amend section 36.701 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), and (e) as (a), (b), (c), and (d), respectively.

PART 53—FORMS

53.236–1 [Amended]

5. Amend section 53.236–1 by removing paragraph (a) and redesignating paragraphs (b), (c), (d), (e), (f), and (g) as (a), (b), (c), (d), (e), and (f), respectively.

53.301–1417 [Removed]

6. Remove section 53.301–1417.

[FR Doc. 03–23531 Filed 9–15–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
September 16, 2003

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 25

Federal Acquisition Regulation; Buy American Act—Nonavailable Articles; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAR Case 2003–007]

RIN 9000–AJ72

Federal Acquisition Regulation; Buy American Act—Nonavailable Articles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to add certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality.

DATES: Interested parties should submit comments in writing on or before November 17, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2003-007@gsa.gov.*

Please submit comments only and cite FAR case 2003–007 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2003–007.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends FAR 25.104(a) to add certain food and textile items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This rule is based on extensive market research by the Defense Logistics Agency.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the items being added to the list are not available from domestic sources. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2003–007), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: September 9, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.104 [Amended]

2. Amend section 25.104 in paragraph (a) by adding, in alphabetical order, the articles ''Bamboo shoots.'', ''Goat hair canvas.'', ''Grapefruit sections, canned.'', ''Modacrylic fur ruff.'', and ''Water chestnuts.''.

[FR Doc. 03–23530 Filed 9–15–03; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
September 16, 2003

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1917 and 1918
Longshoring and Marine Terminals; Vertical Tandem Lifts; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1917 and 1918

[Docket No. S–025A]

RIN 1218–AA56

Longshoring and Marine Terminals; Vertical Tandem Lifts

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: OSHA published a final standard on July 25, 1997, revising all of the Longshoring Standard and related sections of the Marine Terminals Standard. In the preamble to the final rule, OSHA discussed the practice, hereafter referred to as ''vertical tandem lifts'' (VTLs), of lifting two empty intermodal containers together, one on top of the other, connected by semi-automatic twistlocks (SATLs). The final standard did not cover this practice because the rulemaking record contained insufficient information to enable OSHA to determine how to regulate the practice. The proposed standard published today would permit VTLs of two containers with a combined weight of the containers and cargo not exceeding 20 tons.

DATES: Comments and hearing requests must be submitted by the following dates:

Hard Copy: Comments and hearing requests must be submitted (postmarked or sent) by December 15, 2003.

Facsimile and electronic transmission: Comments and hearing requests must be sent by December 15, 2003. (Please see the Public Participation section provided under **SUPPLEMENTARY INFORMATION** for additional information on submitting comments and making hearing requests.)

ADDRESSES: *Written Comments and Hearing Requests:*

Regular mail, express delivery, hand-delivery, and messenger service: Submit three copies of your comments or hearing requests to the OSHA Docket Office, Docket No. S–025A, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t. Because of security-related problems, there may be a significant delay in the receipt of submissions by regular mail. 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 submissions, 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 No. S–025A, in your comments or hearing request.

Electronic: You may submit comments or electronic documents through the Internet at *http://ecomments.osha.gov.* If you have additional materials that you would like to send through the mail, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

All comments will be available for inspection and copying at the OSHA Docket Office at the address above. Comments posted on OSHA's Web page are available at *http://www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Paul Rossi, OSHA, Office of Maritime, Directorate of Standards and Guidance, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. For general information and press inquiries, contact Ms. Bonnie Friedman, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, U.S. Department of Labor, Room N–3101, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: This preamble to the proposed rule for vertical tandem lifts in the Longshoring and Marine Terminals Standards discusses the events leading to the proposal, the necessity for the standard, and the rationale behind the specific provisions set forth in the proposal. The preamble also includes the Preliminary Economic Analysis, a summary of the paperwork issues under the Paperwork Reduction Act of 1995, and sections on other requirements necessary for an OSHA standard. The discussion follows this outline:

I. Background
II. Summary and Explanation of the Proposal
III. Issues for Discussion
IV. Preliminary Economic Analysis and Preliminary Regulatory Flexibility Analysis
V. Environmental Impact
VI. OMB Review under the Paperwork Reduction Act of 1995
VII. Public Participation
VIII. State Plan Requirements
IX. Federalism
X. Unfunded Mandates
XI. Authority and Signature

I. Background

Since the 1970s, intermodalism (the containerization of cargo) has become the dominant mode of cargo transport in the maritime industry, replacing centuries-old, break-bulk cargo handling. In the marine cargo handling industry, intermodalism involves three key components: standardized containers with uniform corner castings; interbox connectors (such as SATLs) to secure the containers, either to each other at the four corners or to the deck of the ship; and a type of crane called a container gantry crane that has specialized features for the rapid loading and unloading of containers. Equipment and operational standards have been developed by the international community to facilitate intermodalism.

The International Organization for Standardization (ISO) is a worldwide federation of national standards bodies whose mission is to promote the development of international standards to reduce technical barriers to trade. There are several ISO standards addressing the design and operational handling of intermodal containers and interbox connectors. In particular, ISO 3874 Freight Containers addresses the size and strength of containers and corner castings, the size and strength of the interbox connectors, and proper lifting techniques. During shipment, containers are secured by interbox connectors to each other and to the deck of the ship. In the conventional loading and unloading process, the container gantry crane lifts one container (either 20 or 40 feet long) at a time, using the crane's specially developed spreader beam. ISO 3874 Freight Containers also addresses the lifting of two 20-foot

containers end to end but, until recently, it has not addressed the practice of vertical tandem lifts (VTLs). A VTL is the practice of a container gantry crane lifting two or more intermodal containers, one on top of the other, connected by a particular type of interbox connector known as a semi-automatic twistlock (SATL).

The issue of vertical tandem lifting was first raised to OSHA by Matson Terminals, Inc. In 1986, through a series of meetings and correspondence with OSHA (Exs. 40–1, 40–2, 40–3, 40–4, 40–5, 40–6, 40–6–1, 40–7), Matson asked to be permitted to lift two containers at a time, connected by SATLs, either empty or with one or both containers containing automobiles. At that time, OSHA regulations did not directly address or prohibit this practice. The container handling regulation § 1918.85(c) stated, ''all hoisting of containers shall be by means which will safely do so without probable damage to the container, and using the lifting fittings provided.'' In November 1986, OSHA, in a letter to Matson (Ex. 40–8), allowed the company to lift containers, either empty or with one or both containers containing automobiles, in VTLs. The letter to Matson stated that:

> The CSHO (Compliance Safety and Health Officer) must be mindful of the manufacturer's specifications and endorsement, the Matson engineering technical specifications, the ABS Test Report, as well as, maintained conditions of the corner posts, the twistlocks, the cones, the containers and the hoisting and/or lifting devices. (Ex. 40–8)

At a 1998 OSHA public meeting on VTLs, a Matson representative testified that, since 1986, they had performed over 47,000 VTLs without incident (Tr. p. 173 (''Tr.'' refers to the transcript of the 1998 public meeting discussed below)).

In 1993, OSHA received a letter from Sea-Land Service, Inc. requesting that OSHA interpret its existing longshoring standards to allow the lifting of two empty 40-foot ISO freight containers that were vertically coupled using SATLs (Ex. 1). OSHA's standards had not changed since OSHA's letter to Matson. In its response, OSHA allowed Sea-Land to handle two empty containers vertically connected, provided that eight requirements were met (Ex. 2). The requirements were developed by OSHA's Directorate of Compliance Programs (now called the Directorate of Enforcement), taking into account applicable OSHA standards and related industry practices associated with container cargo handling operations. These eight requirements are: inspecting containers for visible defects; verifying that both containers are empty; assuring that containers are properly marked; assuring that all the SATLs operate (lock-unlock) in the same manner; assuring that the load does not exceed the capacity of the crane; assuring that the containers are lifted vertically; having available for inspection manufacturers' documents that verify the capacities of the SATLs and corner castings; and directing employees to stay clear of the lifting area.

In 1994, OSHA addressed VTLs briefly in a paragraph of the Preamble of the proposed revisions to the Marine Terminals and Longshoring Standards (59 FR 28602), stating: ''In those situations where one container is used to lift another container, using twistlocks, then the upper container and twistlocks become, in effect, a lifting appliance and must be certified as such.'' OSHA received comments on this issue only from the International Longshore and Warehouse Union (Exs. 4, 5, and 6). Although these comments favored the proposed interpretation and requested the Agency to include it as a requirement in the regulatory text, they included no specific information regarding the hazards of VTLs of two containers using SATLs. Sea-Land submitted a detailed six-page comment (Ex. 7) addressing a number of the proposed changes to the Marine Terminals and Longshoring Standards, but did not address VTLs. OSHA received a late, post-hearing submission from the International Longshoremen's Association, however, that alerted the Agency to what might be a serious problem with this type of lift, citing several incidents at U.S. ports where failures had occurred (Ex. 8). OSHA did not rely on this last letter in issuing the final rule because it was not a timely submission to the record. However, the letter made OSHA aware of safety concerns that might need to be addressed through supplementary rulemaking. Because of a lack of information on the safety considerations, cost impacts, and productivity effects of VTLs, as well as on the capability of containers and SATLs to withstand such loadings, OSHA reserved judgment on the appropriate regulatory approach to this practice, pending further study (62 FR 40152).

Up to the publication of the final Longshoring and Marine Terminals Standards in 1997, OSHA viewed the lifting of one container by another container using SATLs as similar to a container spreader picking up a single container using the spreader's twistlocks. Although the terms ''semi-automatic twistlocks'' and ''twistlocks'' appear similar, they refer to two very distinct items. SATLs were designed to connect and secure intermodal containers that are stowed on the deck of a vessel. They are generally made of a cast metal with a surface that has not been finely honed. By contrast, a twistlock is an integral part of a gantry crane's container spreader. It has a similar appearance to a SATL, but is made of forged metal with a machined surface. These twistlocks are locked and unlocked with hydraulic power, and used as part of the gantry crane to lift and move containers.

In lifting the bottom container in a VTL, the upper container serves the same role as a container spreader on a gantry crane, and the SATLs do the same job holding the bottom container as do the twistlocks on the container spreader.

A gantry crane's container spreaders are considered a ''lifting appliance,'' according to the International Labor Organization (ILO) Convention 152 Dock Work, portions of which OSHA incorporated or adopted in the Longshoring Standards in 29 CFR part 1918. The ILO is a specialized, independent agency in the United Nations which has a unique tripartite structure of business, labor, and government representatives. Its mandate is to improve working conditions (including safety), create employment, and promote workplace human rights, globally. Under ILO Convention 152, a lifting appliance, including the twistlocks, must be proof-load tested and inspected before initial use and periodically retested and re-inspected. However, applying that same requirement to a VTL situation would be much more difficult to accomplish. It would require a specific container (the one being used to lift another container) and four specific SATLs to be tested and inspected as a unit and to remain as a unit for retesting and reinspection. Given the millions of intermodal containers and millions more SATLs used in the maritime cargo handling industry, matching a specific container and four SATLs for VTL use over any length of time is nearly impossible. In view of this impracticality, OSHA sought an interpretation from the ILO, which is discussed below.

On October 9, 1997, OSHA re-opened the VTL record with a **Federal Register** notice that also announced a public meeting that was held in Washington, DC, on January 27, 1998 (62 FR 52671). The transcript for this public meeting is docket exhibit number ''22x.'' The transcript will be referred to in this Preamble as ''Tr.'' followed by a page

number (that is, as ''Tr. p. 33'' rather than ''Ex. 22x, p. 33''). At that public meeting, OSHA heard testimony from 25 witnesses, representing the U.S. Coast Guard, the ISO, national and international maritime safety associations, container and twistlock manufacturers, ship operators, stevedoring companies, and longshore unions.

Shortly after the public meeting, OSHA decided on a multi-faceted approach to resolve the questions raised during the January meeting:

a. Contract with the National Institute of Standards and Technology (NIST) to conduct engineering studies about the strength and durability of container corner castings and SATLs;

b. Meet with the International Cargo Handling and Coordination Association (ICHCA)[1] about international safety aspects of VTLs;

c. Meet with the ILO to clarify the ambiguity in existing interpretations of ILO Convention 152;

d. Monitor the ISO deliberations regarding VTLs; and

e. Form a workgroup within the Maritime Advisory Committee on Safety and Health (MACOSH) to address issues relating to VTLs and report back to MACOSH.

MACOSH was chartered by the Secretary of Labor to advise OSHA on matters relating to its occupational safety and health standards in the maritime industries. Committee members on MACOSH represent employers, employees, the States, the National Institute for Occupational Safety and Health (NIOSH), and other groups affected by maritime standards. During a MACOSH meeting held in Hampton, Virginia, on September 22 and 23, 1998, a VTL workgroup was formed consisting of the MACOSH longshore management and labor representatives, with participation by many other interested stakeholders. Over the next several years, the VTL workgroup discussed VTL issues at informal working group meetings and during MACOSH meetings.

On September 28, 1998, members of MACOSH's VTL workgroup met with ICHCA in Malmö, Sweden, to discuss the VTL issue. This was followed by a meeting with ILO in Geneva, Switzerland. The discussion with the ILO focused on the issue of determining whether the components of a VTL (the upper intermodal container and the SATLs) are either ''a lifting appliance'' or ''loose gear.'' On October 21, 1998, an ILO official indicated to OSHA that the ILO considers SATLs used for lifting to be ''loose gear'' (Exs. 31 and 32). The significance of this decision is that loose gear, under ILO Convention 152, must be tested and inspected before initial use and re-inspected on an annual basis, as opposed to a ''lifting appliance,'' which must be retested at least once every five years. Retesting of a lifting appliance in a VTL would require that a specific container and four specific SATLs used for VTLs be proof load tested before initial use and every five years thereafter. As mentioned previously, this would be almost impossible to do.

During a MACOSH meeting held at the U.S. Merchant Marine Academy, Kings Point, New York, in July 1999, Dr. H.S. Lew of NIST presented a report on the strength of SATLs, latchlocks (a device similar in usage to a SATL, but of a different design), and container corner castings (Ex. 40–10). Dr. Lew's study indicated that the SATLs he tested were very substantial with load capacities ranging from 562 kiloNewtons (kN) (126,400 pounds per square foot (lb/f^2)) to 802 kN (180,300 lb/f^2), and that the container corner castings were more likely to deform and fail before the SATLs. However, he expressed reservations about a particular type of interbox connector, called a single-sided latchlock, because of its smaller bearing surface contact with the corner casting. The smaller surface area makes it more likely that, if the spring-loaded latch does not extend fully inside the container corner casting, it could slip through the hole in the corner casting when under load, such as when lifting another container. Even when the lock of a single-sided latchlock was fully extended, the NIST study determined that its surface area was insufficient for doing VTLs. In regard to the strength of SATLs, the conclusions of the NIST study were similar to a Swedish study (Ex. 11–6 H) that was conducted in 1997 by the Swedish National Testing and Research Institute.

On September 8, 2000, the USA delegation to ISO Technical Committee Number 104 Freight Containers (ISO/TC 104) held a meeting in Washington, DC, primarily to discuss the U.S. position on VTLs for the ISO biennial meeting to be held in October. After this meeting, OSHA sent a letter to the Chairman of ISO/TC 104 addressing concerns such as safety factors, the use of latchlocks, and the lack of operational procedures (Ex. 40–11).

At their biennial meeting in Cape Town, South Africa, in October 2000, the ISO/TC 104 agreed that SATLs, which previously were only used for securing containers, could be used to lift containers. However, the ISO/TC 104 language did not address the question of how to use SATLs safely for such lifting, because ISO does not issue standards for operational procedures. In response to safety concerns in this area, ISO/TC 104 passed a resolution, requesting that ICHCA, a member of ISO/TC 104, develop operational guidelines for VTLs. ICHCA agreed to work on such guidelines.

In May 2002, ISO formally adopted language allowing SATLs that meet certain conditions to be used for lifting:

> The vertical coupling of containers that are not specifically designed as in 6.2.4 [ISO 3874] for lifting purposes, using twistlocks or other loose gear, is acceptable if forces of not greater than 75 kN[1)] act vertically through each corner fitting, and the twistlocks or other loose gear used are certified[2)] for lifting. The twistlocks or other loose gear shall be periodically examined (Ex. 40–9).

Footnote 1 states:

> The value of 75 kN prescribes the minimum structural capability of the lock/corner fitting combination. The 75 kN value includes an arbitrary constant wind load of 26 kN (corresponding wind speed of 100 km/h), regardless of the size of the containers. As an example, the balance of the 75 kN value equates to two 1 AAA containers with a combined tare of 22 kN and a maximum payload of 27 kN. A practical upper limit of three vertically-coupled containers is also envisaged (Ex. 40–9).

Footnote 2 states:

> The certification process envisaged is to use a safety factor of at least four based on the ultimate strength of the material (Ex. 40–9).

Essentially, this means that, based on the strength of the SATLs and the containers, the ISO standard would allow VTLs to consist of up to three containers with a total load weight of 20 tons.

In January 2001, an ICHCA VTL workgroup met in London to begin drafting operational guidelines for VTLs as agreed to at the Cape Town meeting. The ICHCA workgroup finalized their VTL guidelines in September 2002, and received final approval by ICHCA's Board of Directors in January 2003. OSHA has given careful consideration to the ICHCA guidelines in the drafting of this proposed rule. A copy of the guidelines is available in the docket (Ex. 41). The guidelines are available for purchase through ICHCA's Web site: *http://www.ichcainternational.co.uk/.*

A. International Aspects

As with all Federal agencies whose regulations influence international

[1] ICHCA is an independent, non-political international membership organization established in 1952, whose membership spans some 85 countries and comprises corporations, individuals, academic institutions and other organizations involved in, or concerned with, the international transport and cargo handling industry.

trade, OSHA has developed this proposal in light of international considerations. Through domestic law and international agreements, the United States has indicated its intention that wherever possible, standards-related activities should not be a barrier to trade. The Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) addresses technical barriers to trade regarding federal regulation. Section 2532 of this Act states the following:

> Section 2532. Federal standards-related activities. No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, * * *.
>
> (1) Nondiscriminatory treatment. * * *
>
> (2) Use of international standards. (A) In general, * * * each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

Additionally, and consonant with this country's position on barriers to international trade, the United States is a signatory to the Multilateral Convention on the Facilitation of International Maritime Traffic (1965) (Ex. 1–3). As a contracting government, the United States has agreed to:

> [U]ndertake to co-operate in securing the highest practicable degree of uniformity in formalities, documentary requirements and procedures in all matters in which such uniformity will facilitate and improve international maritime traffic and keep to a minimum any alterations in formalities, documentary requirements and procedures necessary to meet special requirements of a domestic nature. (Article 3)

Mindful of these international aspects, OSHA has sought to formulate a protective but flexible approach to VTLs. OSHA is confident that its proposed requirements for VTLs are consistent with the relevant provisions of ILO Convention 152 and with most of the provisions of the ISO standard and ICHCA guidelines.

B. Risks and Benefits of VTLs

VTLs can reduce the time it takes to load or unload containers from a ship. The productivity gain is reported to be 5 to 10 percent of the total time (see the Preliminary Economic Analysis below). Although there are some costs associated with extra engineering and work practice controls necessary to handle VTLs safely, the evidence indicates that these costs are outweighed by the overall cost savings to unload the ship. The fact that stevedores have requested OSHA's guidance in performing VTLs and that some are currently performing these lifts is further evidence that they provide cost savings. The cost savings come from reducing the time (labor costs) for the longshore operations (loading and unloading), and, perhaps more significantly, of hourly capital and labor costs for the cargo ship. VTLs appear to be more economically advantageous when ships are loading or unloading large numbers of empty containers. The extent of the use of VTLs may therefore be dependent on the pattern of trade; for example, when imports exceed exports resulting in more empty containers being shipped out of a U.S. port.

OSHA's current longshoring and marine terminal standards do not prohibit VTLs of empty containers. The Agency's standards also allow for lifting of loaded containers, without specifying whether they are handled singly or as a VTL, if the containers are ''handled using lifting fittings or other arrangements suitable and intended for the purpose * * *'' (29 CFR 1918.85(f)(1)(iv)).

The ISO's central criterion for VTLs is that the maximum total weight that can be safely lifted in a VTL is 20 tons. It would allow employers to perform VTLs of combinations of empty containers and loaded containers as long as they do not exceed 20 tons (total load weight). In setting a 20-ton limit, ISO evaluated the strength of containers, their corner castings, and the SATLS used for lifting, but did not evaluate the work practices and controls necessary to ensure safe handling . ISO based its limit on research (sponsored by OSHA) by NIST (Ex. 40–10), a study by the Swedish National Testing and Research Institute (Ex. 11–6 H), and ISO's own technical knowledge of containers and SATLs (Ex. 11–6–C). The 20-ton limit provides a margin of safety of a factor of five for strength. (A safety factor of five means that the SATLs and corner castings would not fail with a lift weighing 100 tons. It also means that for a VTL of two containers, if the bottom one was fully loaded, the corner castings and SATLs would still not fail.) OSHA preliminarily concludes that, based on the established strength of containers and liftlocks, VTLs up to 20 tons are safe. (Under the proposal, a SATL may be used as a liftlock only if it has been tested, inspected, certified, and marked with a safe working load.)

ISO concluded that VTLs with a 20-ton maximum weight would mean a ''practical'' limit for VTLs of three containers (Ex. 40–9). To the best of the Agency's knowledge, employers are not performing VTLs of more than two containers in the United States.

OSHA has preliminarily concluded that the strength of the containers and liftlocks constitutes one factor, but not the only factor to be considered in performing VTLs safely. Employers must also follow safe handling procedures, including the use of appropriate engineering controls [such as load indicating devices (LIDs)], work practice controls (such as pre-lifts), and administrative controls (such as annual inspection of liftlocks and containers) for handling VTLs. Many of these control measures address risks that were first identified in OSHA's 1994 letter to Sea-Land, permitting VTLs of two empty containers.

The ICHCA guidelines set forth a series of safe handling procedures. As discussed further below, OSHA's proposed rule incorporates many of these procedures, including: requiring annual and on-going inspections of liftlocks and containers; prohibiting spring-loaded latchlocks for VTLs; requiring stevedores to have a written VTL terminal plan for handling VTLs in the terminal; requiring each ship to use only a single type of liftlock; requiring LIDs on container gantry cranes; prohibiting VTLs when winds exceed 34 mph; and requiring pre-lifts to ensure that all liftlocks on the VTL are engaged and holding before raising the VTL unit higher.

VTLs have been performed in the United States since 1986. As noted earlier, Matson reported that they had performed almost 50,000 VTLs of two empty containers or two containers loaded with automobiles without an injury to employees or a documented accident between1986 and 1998 (Tr. p. 166). Sea-Land reported that by 1999, it had performed 300,000 VTLs of two empty containers without injury (Ex. 36). However, Sea-Land has reported three accidents. The cause of one was unrelated to the typical risk of VTLs—the crane legs did not have sufficient clearance for VTLs and the containers struck the crane legs, causing the lower container to separate from the top container and fall. Sea-Land reported that the crane operator and superintendent violated company rules in this instance (Tr. p. 208). In the second accident, two containers ''alligatored'' without completely separating when the two SATLs on one end were not engaged in the top corner castings of the bottom container. Following this incident, Sea-Land reported that they instituted a pre-lift test when performing VTLs. In a pre-lift, the combined containers are lifted a few feet up to ensure that all liftlocks are engaged in the corner castings before continuing the lift. A third accident occurred when spring-loaded latchlocks were used to secure containers together. The design of those latchlocks leaves

them susceptible to becoming fouled with dirt or other debris. If that occurs, they may not fully extend, causing them to have insufficient contact area with the corner casting. In the case of the third accident, there were no injuries and the accident would have been avoided by using regular SATLs which close positively when the containers are mated and have handles indicating their open or closed state (which is required by the Proposal). The Agency contracted with Robert Baron, an expert in the longshoring industry, to find other reported incidents or accidents involving VTLs, but none besides those mentioned above were found and verified (Exs. 42, 42–1, 42–2).

As will be discussed further below, provisions in OSHA's proposal would have prevented the second and third VTL accidents just discussed. (Normal operating procedures that prohibit the handling of containers that do not fit between the legs of a crane should have prevented the first accident.) The Agency preliminarily concludes that the procedures required in the proposal will substantially reduce the risk to employees of performing VTLs for these same reasons.

The Agency is concerned that lifting loaded containers in a VTL presents additional hazards to those involved with lifting empty ones. Loaded containers are more likely to have errors in weighing; so it is more likely that an overweight lift will be attempted—one weighing more than 20 tons. Secondly, loaded containers have loads that could shift during ocean transit or while being lifted by the container gantry crane (VTLs of containers with bulk and liquid cargoes would be prohibited for this reason). The Agency seeks comment on these issues and any other issues that pertain to the risk of lifting loaded versus empty containers.

The Agency is aware that containers fail even in single lifts, although this is very rare. The Agency has preliminarily concluded that, when the proper work practice precautions as specified in the proposed standard are followed, employers who follow the proposal will be able to perform VTLs safely. The industry's experience with VTLs of two containers (about 350,000 over 15 years) is substantial but relatively small when compared to the 13 million single lifts performed annually. In addition, to OSHA's knowledge, all VTLs performed in the U.S. to date have consisted of only two containers. Although the Agency has preliminarily concluded, based on the information in the record of this rulemaking, that VTLs can be performed safely with 2 containers, it has concerns about whether additional containers would increase the risk to employees and necessitate the use of additional controls and work practices. The Agency seeks comment on the relative risk of lifting VTLs of two versus three containers. What are the additional sources of risk in lifting three containers? Are there additional safety measures that would reduce the risk of VTLs of three containers? If VTLs of three containers separated or failed, they potentially could fall much further from the crane; that is they would have a bigger ''footprint'' than VTLs with two containers, and thus would expand the area in which longshore workers are exposed to the risk of falling containers.

Clearly the number of empty or loaded containers permitted in a VTL by this proposed standard is a central issue in this rulemaking. The Agency welcomes comment on this issue.

OSHA also solicits information on whether employers have had experience with VTLs of more than two containers, either in the U.S. or in other countries. The Agency has preliminarily concluded that the proposed standard is feasible and that it will protect employees. The Agency also requests comment on the issue of whether or not VTLs reduce the number of lifts and time longshoremen spend unloading a vessel, thus potentially reducing the risk of handling containers. The performance of VTLs is an option for employers, and OSHA's intent is to provide safe methods for employers who choose to exercise that option.

Based on the technical studies performed on containers and SATLs, and the safe work procedures required in the proposal, the Agency also concludes that the proposal is technologically feasible (see Preliminary Economic Analysis below). Indeed, VTLs of two empty or partially loaded containers have been performed for many years. In addition, since the proposal does not require the use of VTLs when handling containers, employers may choose to perform VTLs or continue to handle containers in single lifts.

In addition, based on the Agency's Preliminary Economic Analysis (below) that VTLs, if they are used, may result in overall cost savings in cargo operations, the Agency likewise concludes that the proposal is economically feasible and cost-effective.

II. Summary and Explanation of the Proposal

OSHA is proposing to issue new provisions in the Longshoring and Marine Terminals Standards (29 CFR parts 1918 and 1917) to regulate the use of VTLs. These proposed provisions are based on objective research, industry experience with VTLs, ISO standards, the ICHCA VTL guidelines, and comment and testimony from the Agency's public meeting in January 1998. The proposed standards provide safe work procedures (engineering, work-practice, and administrative controls) for lifting two empty or partially loaded containers, with a total weight of up to 20 tons, connected by liftlocks. Testing has demonstrated that the liftlocks permitted by the proposal are substantially strong enough to lift 20 tons with a safety factor of five.

The proposed regulations for VTLs are contained in both the Marine Terminals Standard (29 CFR 1917) and the Longshoring Standard (29 CFR 1918). OSHA proposes that VTLs only be performed by a shore-based container handling gantry crane. In accordance with 29 CFR 1917.1(a), which states that cargo handling done by a shore-based crane is covered by part 1917, the proposed regulations that address the make-up of a VTL, such as the number of containers and maximum weight, would be in part 1917. Proposed regulations that address the certification and testing of liftlocks are in both parts 1917 and 1918. Liftlocks are vessel's gear, that is, gear owned and maintained by the vessel, and they would be addressed in part 1918. However, liftlocks can also be used in the marine terminal to assemble VTLs prior to loading on the vessel: therefore, the same certification and testing requirements for liftlocks that are proposed in part 1918 are also proposed in part 1917. The proposed VTL regulations for part 1917 are discussed first.

A. Part 1917—Marine Terminals Standards

In § 1917.2 and § 1918.2 Definitions, OSHA is proposing to add the definition of a VTL as ''the operation of lifting two intermodal containers that are coupled together vertically (one on top of the other).'' OSHA is also proposing to include the definition of ''liftlock'' to both parts. This definition differentiates liftlocks, which are certified and used for lifting, from SATLs or other inter-box connectors, which are not certified and only used for securing containers on a vessel.

In § 1917.3(c), Incorporation by Reference, OSHA is proposing to add parts of ISO Standard 3864 that apply to VTLs.

Section 1917.46(a)(1)(viii) does not currently require a load indicating device (LID) for container handling gantry cranes. This is because the safe working load (SWL) of these cranes does

not vary with the location of the load. However, in using these cranes to perform VTLs, a LID is needed, both to prevent the crane from being overloaded by multiple containers and to assure the liftlocks and the containers used in the VTL are not overloaded. Accordingly, this proposal would revise paragraph 1917.46(a)(1)(viii) to require a LID when performing VTLs. OSHA has concluded this is necessary because if two containers weighing more than 20 tons are lifted in a VTL by mistake, the crane operator will realize this condition through the reading on the LID and be able to lower the load before overloading the liftlocks, upper container, or the crane itself. OSHA believes that the LID requirement is essential to the safe handling of VTLs.

The Marine Terminal Standards require that the employer know whether a container is empty or loaded before it is hoisted (29 CFR 1917.71(b)(1) and (b)(2)(ii)). For containers being discharged from a vessel, most employers and employees rely on the vessel cargo stowage plan, also called a stow plan, that shows: The location of each container on the vessel, the container's unique identification number, the weight of the container, and other information, such as if the container contains hazardous material. For containers being loaded onto the vessel, the same information is contained on a stow plan that shows where the containers are to be placed on the vessel. This method of determining the weight of a container is adequate for handling containers individually. This is because if the stow plan understates the weight of the container, the hoisting of a fully loaded container will not overload the crane. However, it is not adequate for handling a VTL, because if the weights of multiple containers are understated, the hoisting of those containers in a VTL could overload the crane. A crane operator testified that:

> I know I've picked up containers they told me were empty and I say it's a load. And they say, no, it's an empty. I tell them, listen, this is a load. And they don't know it until they get it down. (Tr. p.252).

The proposed LID requirement for VTLs is supported by comments already received by the Agency from the public meetings. One commenter observed:

> What concerns Peck and Hale as an American based company that supplies equipment to ships worldwide is that of safety. OSHA can approve empty lifting but no one can guarantee that these containers are empty. Containers are shifted in ports. Containers are mismarked and not accurate [sic] weighed. (Tr. p.161.)

Proposed paragraph 1917.71(b)(9) requires that a copy of the vessel cargo stowage plan be given to the crane operator. This paragraph also requires that the vessel cargo stowage plan be used to identify the location and characteristics of any VTLs to be lifted. Although crane operators may not be accustomed to referring to a vessel cargo stowage plan while handling containers, this requirement will help the crane operator to better anticipate and focus on the VTL operation. This provision would supplement existing § 1917.71(b)(1) and (b)(2)(ii), which require those in charge of loading to be notified of the location of all empty and loaded containers that are to be handled as VTLs.

Proposed paragraph 1917.71(b)(10) requires that the crane operator conduct a pre-lift before hoisting a VTL. A pre-lift is a pause in the VTL as the initial strain is taken and the lifting frame wires tensioned, which allows a physical testing of the liftlocks to ensure that they are engaged. This is consistent with the practice previously described by Sea-Land.

Existing paragraph 1917.71(f) addresses the normal handling of containers. OSHA is proposing to add additional operational requirements to this paragraph for performing VTLs, based on research studies, ISO Standard 3874, and the ICHCA VTL guidelines.

Proposed § 1917.71(f)(3)(i) limits a VTL to two ISO series 1 containers [2], with a total weight of 20 tons, which includes the weight of the container directly under the spreader bar.

Proposed § 1917.71(f)(3)(ii) requires that VTLs be handled only by container gantry cranes. This is necessary because this type of crane is specifically designed to handle intermodal containers and has the precise control needed for such lifts. While this control is important for handling single containers, it is even more important when handling VTLs, because the volume of the load and the sail area created by the VTL are greater.

Proposed paragraphs 1917.71(f)(3)(iii), (iv), (v), and (vi) are a listing of ''do nots'' when handling VTLs. Proposed paragraph 1917.71(f)(3)(iii) would prohibit VTLs for containers with hazardous cargo, liquid or solid bulk cargoes, or flexible tanks that are full or partially full. Any failure of a container with a hazardous cargo poses a very significant risk to employees. Bulk cargoes can quickly shift inside the container, causing a free surface effect that can move the weight of the container to one end. This would quickly increase the weight on two of the four liftlocks and could lead to failure. Containers loaded with such cargo must be handled individually. Containers holding liquids pose a similar hazard of shifting or spilling cargo.Paragraph 1917.71(f)(3)(iv) addresses platform containers, or ''flat racks.'' Platform containers are those that are open on the sides and top, but have panels on both ends. These end panels are either fixed or can be folded flat with the floor of the container, depending on the design of the flat rack. When the end panels are in the upright position, handling as a VTL is not allowed in proposed paragraph (iv) because the lack of sides and roof lessen the stability and strength of the container. However, under paragraph 1917.71(f)(3)(iv), if empty platform containers have the ends folded down, and have built-in connectors that are designed for the purpose of lifting multiple units, they may be handled in accordance with manufacturers' recommendations. This continues a current industry practice (Exs. 10–2, 10–2A, 10–2B, and 11–6C). Two flatracks with the ends folded down may be handled as a VTL if they are connected by liftlocks that are not built-in.

Paragraph 1917.71(f)(3)(v) would prohibit VTLs of any containers that are in the hold of a vessel. Containers are stacked in the hold in cell guides, which are steel beams constructed to secure stacks of containers. There is not enough clearance for the handle of a liftlock between the liftlock and the cell guide. If used, the handles of liftlocks would break off in the cell guide as containers were lowered into the guide. It would also be very difficult or even impossible for the crane operator or other observer to see whether the liftlocks are in the locked position, or to determine the condition of the containers or liftlocks.

Paragraph 1917.71(f)(3)(vi) prohibits the handling of VTLs when the wind speed exceeds 34 mph. At the request of the ICHCA VTL workgroup, an engineering analysis was conducted by a consultant to determine an appropriate maximum wind speed for VTLs (Ex. 41, Appendix 4). The 34-mph limit was calculated based on a three-container VTL with a total weight of 20 tons.

Existing paragraphs 1917.71(f)(3), (f)(4), and (f)(5) have been redesignated as 1917.71(f)(4), (f)(5), and (f)(6), respectively.

Proposed paragraph 1917.71(i) prohibits the movement of VTLs on flat bed trucks, chassis, bomb carts, or

[2] An ISO series 1 container is one that is intended for intercontinental use and is in compliance with relevant ISO standards.

similar type equipment, unless the equipment is specifically designed to safely handle VTLs or has been evaluated by a qualified person and determined to be a safe mode of operation. Moving two containers on such equipment raises the center of gravity higher than the equipment was designed for, increasing the possibility of turning over. A study was conducted at the request of the ICHCA VTL work group to determine the safe turning radius and speed with which VTLs may be moved in a terminal (Ex. 41, Appendix 6). This study provides chassis stability calculations for determining the speed at which a fifth wheel and chassis carrying VTLs will overturn while making a turn. These calculations could be used by employers to determine the safe operating speeds for transporting VTLs at a terminal. Safe transport of VTLs and safe operating speeds are part of the VTL terminal plan required in the next paragraph. Proposed paragraph 1917.71(i) defines a qualified person as ''one with a recognized degree or professional certificate and extensive knowledge and experience in the transportation of vertically connected containers who is capable of design, analysis, evaluation and specifications in that subject.'' This definition is similar to the one found in § 1918.85(k)(6) and (8) concerning fall protection systems.

Proposed paragraph 1917.71(j) requires, in conjunction with paragraph (i), that a written VTL terminal plan be developed and implemented to facilitate the safe movement of vertically connected containers in a marine terminal. The plan must include safe operating speeds, safe turning speeds, and any conditions unique to the terminal that could affect VTL operations.

Proposed § 1917.71(k) requires the employer establish a system that keeps damaged or defective liftlocks separate from working liftlocks. This is now typically done by having a separate storage bin marked for damaged or defective SATLs and instructing employees to put any that do not function normally into that bin. This will typically be part of regular, on-going inspections of liftlocks as they are handled.

Proposed paragraphs 1917.71(l)(1)(i) through (l)(1)(vii) and (l)(1)(ix) require that any liftlocks that are used to assemble VTLs ashore comply with the applicable standards of ISO 3874 and the loose gear requirements of ILO Convention 152 that are more fully discussed below in the section explaining the VTL proposed regulation for part 1918.

Proposed 1917.71(l)(1)(viii) is a requirement for liftlocks that is not repeated in part 1918. It requires that the liftlocks that are used to connect containers to be loaded as a VTL be the same as the liftlocks on the vessel to which the connected containers will be transferred. This requirement will ensure that VTLs made up on the terminal under the requirements of part 1917 are using certified liftlocks that are the same as those used on the vessel onto which the VTLs will be loaded. This is to eliminate the danger of having more than one type of liftlock on a vessel. Mixing different types of liftlocks could result in mismatched liftlocks on a container that do not all lock (or unlock) in the same direction. Longshore employees and crane operators look for the ''telltales'' (a part of the liftlock that indicates whether the liftlock is locked or unlocked), or the handles of the liftlocks, all to be facing in the same direction to determine whether or not containers are free to be lifted or, in a VTL, are locked together for lifting. Mixing types of liftlocks could cause a VTL to separate when being lifted because different liftlocks with reverse locking indicators could mistakenly appear to be locked when they are in fact unlocked.

Proposed paragraph 1917.71(l)(2) defines a competent person as ''a person familiar with the proper maintenance and use of liftlocks by training or experience. Such a person will be able to detect defects or weaknesses and be able to assess their importance in relation to the safe and continued use of the liftlocks.'' The proposed definition for competent person is more appropriate for VTL operations than the existing definition found in OSHA's shipyard standard, 29 CFR 1915.4, which is concerned with atmospheric hazards.

Proposed paragraph 1917.71(m) prohibits the use of manual twistlocks or latchlocks as liftlocks, which is further discussed below.

B. Part 1918—Longshoring

In 29 CFR part 1918, Safety and Health Regulations for Longshoring, OSHA proposes to add several definitions relating to VTL operations. In § 1918.2 Definitions, OSHA proposes to add the terms *competent authority, liftlock,* and *vertical tandem lift.*

The longshoring standards require certain equipment to be certificated by a competent authority. Currently, loose gear (which under this proposal would include liftlocks) in the U.S. is certificated by OSHA-accredited agencies under 29 CFR part 1919, Gear Certification. Foreign flag vessels carry certificates issued by the recognized body appropriate for that country. Often the recognized body issuing certifications is a classification society such as the American Bureau of Shipping, Lloyds Register, or Bureau Veritas.

For the purpose of this proposed VTL standard, OSHA is defining competent authority as ''the appropriate government agency having jurisdiction over VTL operations in each port of call where such operations are proposed.'' OSHA or the U.S. Coast Guard would be the competent authority for certifications in the United States. Other countries would have their own competent authority that would have jurisdiction over VTL operations in that country. Certification of liftlocks, which is verified by certificates issued by agencies authorized by a competent authority, is the primary way an employer will determine that liftlocks on a vessel (or ashore) can be used for lifting. These certificates are found in the vessel's cargo gear register.

OSHA is proposing in § 1918.2 to include the same definitions for *liftlock* and *vertical tandem lifts* as proposed and discussed previously for § 1917.2.

In § 1918.3(c), Incorporation by Reference, OSHA is proposing to add parts of ISO Standard 3874 that apply to VTLs.

Proposed § 1918.85(f)(3)(i), (ii), (iii), (iv), and (v) adopt provisions for liftlocks (as loose gear), including testing, inspection, and marking before initial use. Paragraph 1918.85(f)(3)(i) would require that liftlocks meet the applicable requirements found in ISO 3874. Paragraph 1918.85(f)(3)(ii) would require that each liftlock has ''been inspected by a competent person, certificated, and individually tested in accordance with requirements for loose gear in ILO Convention 152 before being used for the first time and after any substantial alteration or repair.'' Testing means that each liftlock has been tested to a SWL of 10,000 kg as required in paragraph (iv) discussed below.

Proposed paragraph 1918.85(f)(3)(iii) would require that liftlocks be thoroughly examined at least once a year by a competent person. It also states what is required by this thorough exam: A visual exam for obvious structural defects; physical operation of the parts to determine that the lock is fully functional with adequate spring tension on each head or latch; a check for excessive corrosion and deterioration; and immediate removal from service when found to be defective. This is consistent with ILO Convention 152 regarding loose gear.

Proposed paragraph 1918.85(f)(3)(iv) would require that liftlocks be regularly examined, including a visual inspection, which could be done by employees involved in the VTL operation, before each use. This is consistent with OSHA standards and with ILO Convention 152 and will help identify defective liftlocks on an on-going basis.

Proposed paragraph 1918.85(f)(3)(v) would require that liftlocks to be certificated with a SWL for lifting of at least 10,000 kg., in accordance with ICHCA guidelines (Ex. 41, Section 8).

Proposed paragraph 1918.85(f)(3)(vi) would require that every liftlock be clearly and durably marked with its SWL for lifting, together with a number or mark that identifies it as a liftlock and connects it with its test certificate. This marking and certification must be done before any liftlock is used for lifting. Although the ICHCA guidelines allow for batch testing, OSHA's proposal would require individual testing in accordance with ILO Convention 152, which is discussed in the next section.

Proposed paragraph 1918.85(f)(3)(vii) addresses the characteristics of the liftlock. All liftlocks on a vessel shall lock and unlock in the same manner. Some liftlocks lock and unlock in a horizontal direction, others in a vertical direction. What is important and required is that all the liftlocks on a vessel work in the same manner to allow employees involved in VTLs to know whether or not the locks are locked or unlocked before a lift is performed. In order for an observer to visually determine whether the liftlocks are locked or unlocked, they must have a ''telltale,'' which is typically a solid metal lever or a flexible wire, possibly painted to enhance visibility. This allows employees working with VTLs to see whether a liftlock is locked or unlocked.

Proposed paragraph 1918.85(f)(4) defines a competent person as ''a person familiar with the proper maintenance and use of liftlocks by training or experience. Such a person will be able to detect defects or weaknesses and be able to assess their importance in relation to the safe and continued use of the liftlocks.'' The proposed definition for competent person is more appropriate for VTL operations than the existing definition found in OSHA's shipyard regulations, 29 CFR 1915.4, which is concerned with atmospheric hazards.

Proposed paragraph 1918.85(f)(5) prohibits the use of manual twistlocks or latchlocks as liftlocks. Manual twistlocks, which have largely been replaced by SATLs due to OSHA's container top safety regulations and increased productivity (see discussions in 62 FR 40174, Longshoring and Marine Terminals Final Rule), do not have a positive locking mechanism. By contrast, SATLs have a locking device that uses spring tension to prevent it from unlocking. Manual locks could unlock through normal container handling while being used for lifting, making them unsuitable for lifting. The limits and weaknesses of latchlocks for VTLs was discussed earlier in this Preamble.

III. Issues for Discussion

1. In this **Federal Register** notice, OSHA is proposing to permit VTLs containing two containers with a total weight (containers plus cargo) of up to 20 tons. However, the Agency is aware that ISO standards and ICHCA guidelines on VTLs would allow up to three containers with the same total weight (up to 20 tons). Therefore, OSHA is seeking comment on whether three-container VTLs of up to 20 tons can be handled as safely as two-container VTLs with the same weight limitation. Are additional safeguards necessary for safety?

2. A fundamental issue of VTLs is the strength of the containers and liftlocks. As discussed above, OSHA contracted with another Federal agency, NIST, to conduct strength tests for SATLs. The report that NIST issued is Exhibit 40–10. It concluded that SATLs are very strong, noting that container corner castings fail before the SATLs (Ex. 40–10, pp. 43–44). Although the Agency has received considerable information on the topic, it welcomes further comments. Also, is there any scientific or engineering data that addresses maintenance testing and ''life'' of the components used for lifting purposes?

3. The NIST report also noted that a particular type of locking device known as a ''single-sided latchlock'' has insufficient surface area (that part of the lock that actually contacts the container corner casting and bears the weight of the lift) and that the strength of that kind of latchlock was less than that of a SATL. The design of the latchlock is such that the extent of the contact made by the lock relies on a spring that can become clogged by debris such as salt or grease which, in turn, can reduce significantly the contact area with the container corner casting (Ex. 20). In addition, by contrast with latchlocks, the handle of SATLs is designed as an integral part of the locking mechanism. The position of the handle allows the employees to be assured that, when the handle is in the locked position, the lock is engaged. Latchlocks are not designed in the same way. For these reasons, the NIST report, the ICHCA guidelines, and this proposal do not approve of the use of latchlocks for VTLs. OSHA realizes that there are also double-sided latchlocks that have more surface area than single-sided latchlocks; however, their locking mechanism is the same as that of single-sided latchlocks, with the same limitations for VTL purposes. OSHA seeks comment on whether double-sided latchlocks could be used for VTLs, and under what conditions.

4. OSHA seeks public comment on appropriate testing and examination requirements for existing SATLs that are to be used for lifting. OSHA believes that all liftlocks must be individually tested and examined before initial use in VTLs. However, ICHCA guidelines allow for batch testing instead. Batch testing means, instead of testing each liftlock, one liftlock out of every group (for example, 50) of liftlocks made during the same production run is tested and used as a representative sample of the group. If the selected liftlock fails the testing, the whole group of 50 fails. However, the ILO does not allow batch testing for loose gear and, in a response to ICHCA on this issue, has maintained this position specifically for liftlocks. Of particular note, in this regard, is the rough use that SATLs endure when used for securing containers on deck, along with their expected life expectancy of 7 to 10 years.

5. Under the ICHCA guidelines, liftlocks can comply with the ILO Convention 152 loose gear requirement to be inspected annually by using an Approved Container Examination Program-type (ACEP) plan that is used to inspect containers. The ACEP program is a part of the International Maritime Organization's (IMO) Convention for Safe Containers (CSC), which is enforced in the United States by the Coast Guard. Under the ACEP plan, containers are inspected frequently on an irregular basis as opposed to a set time period. This is generally done at the gate of a marine terminal, where containers are inspected as they are brought into the marine terminal, and the custody of the container is transferred from the over-the-road trucker to the marine terminal operator. The same inspection occurs when the over-the-road driver takes a container from the marine terminal, transferring custody of the container from the terminal operator to the truck driver. In both cases, the container is inspected for damage, and, when going out of the terminal, it is also inspected

for ''roadability,'' which is compliance with the Department of Transportation's regulations for equipment on public roads, such as brakes and lights. The OSHA proposal does not consider the ACEP program to be sufficient for liftlocks. Instead, it requires that liftlocks be inspected once every twelve months by a competent person. Liftlocks are subject to extreme weather conditions, exposure to salt water, cold temperatures, stresses through the movement of the vessel on the ocean, stresses when used for lifting, and rough handling when being removed during unloading operations. For these reasons, OSHA believes that an ACEP-type inspection program is inadequate and that the liftlocks must be inspected on an annual basis by a competent person. Vessel operators could use some kind of color coding to determine which liftlocks had been examined, as a positive visual indicator that a liftlock had been examined. OSHA seeks comment on this issue.

6. Currently, the inspection of intermodal containers is governed by the CSC, which is an international convention issued under the auspices of the IMO. In this country, the United States Coast Guard is responsible for overseeing compliance with the CSC. One of the provisions of the CSC is the periodic inspections of containers for wear and damage. This can be done in two ways. The first way is for an independent third party to inspect every container initially after 5 years and then every 30 months. The second way is to develop an ACEP plan as described above. During the 1998 VTL public meeting, a representative from the U.S. Coast Guard testified that the CSC container inspection programs have been successful, citing few container failures (Tr. pp. 31–48). A concern was raised by the unions about the inspection of the containers' bottom corner castings under the CSC (Exs.11–1B, 11–1G). The bottom corner castings have a greater importance when doing VTLs because they carry the load of the container below. The concern is that the bottom corner castings may be obscured by the equipment that is carrying the containers so that cracks and other damage to corner castings could be missed during the inspection. OSHA seeks comment on this issue. Do the current inspections adequately inspect the bottom corner castings, or are additional measures needed?

7. OSHA is requesting comment on whether or not the standard should include a reporting mechanism for VTL accidents and near-misses. As noted earlier, OSHA's experience with VTLs has primarily been with two empty containers. Given the relatively limited number of VTLs that have thus far been performed in this country, the Agency is considering whether to require employers to report to OSHA when any of the following events occur during VTLs: accidents, drops, near misses, and damage to containers or liftlocks. What would be an appropriate minimum threshold for reporting? Damage to equipment? What would be the appropriate authorities (OSHA or another Agency) to receive this information? For how long should the Agency receive this information?

8. Another issue is the effect of wind on a VTL operation, both when loading and unloading from a vessel and when moving VTLs in the terminal. The ICHCA guidelines and OSHA's proposed standard would prohibit VTL operations both at the vessel and in the terminal when wind speed exceeds 34 mph. OSHA seeks comment on the effect of wind on VTLs and on the maximum wind speed allowable in VTL operations. Is a permissible wind speed of up to 34 mph excessive for VTLs being transported and handled in a marine terminal? A wind speed that is appropriate when handling VTLs with a container gantry crane may not be appropriate for VTLs being transported to the crane on a chassis or flatbed. As discussed, the proposed 34 mph limit was based on research involving VTLs of three containers. Is that limit also appropriate for VTLs of two containers?

9. The Agency solicits comment on training that might be necessary for safe VTL operations. The current Marine Terminals and Longshoring Standards address crane operator training in § 1917.27(a)(1) and § 1918.98(a)(1), respectively. Those regulations require that only an employee ''determined by the employer to be competent by reason of training or experience, and who understands the signs, notices and operating instructions and is familiar with the signal code in use, shall be permitted to operate a crane, winch, or other power-operated cargo handling apparatus, or any power-operated vehicle, or give signals to the operator of any hoisting apparatus.'' Thus far, VTLs have been performed by crane operators with no specific required off-site training in VTLs. In addition, making up and breaking down VTLs is little different from the work already performed by longshore employees. Is it necessary to provide specialized training for VTLs? How much, in what topics, and for whom?

10. To what extent are vertically coupled containers currently being lifted and by whom? What are the potential productivity gains associated with lifting VTLs?

11. What information (both recorded data and anecdotes) is available on incidents involving vertically coupled containers that have fallen? Have any employees been injured or killed in VTL incidents? Have there been ''near-misses,'' and if so, what were the causes?

12. What should be in the terminal VTL handling plan? Do VTLs introduce into the workplace new hazards other than those discussed in this notice? What safe practices are necessary to ensure safe transport of stacked containers via ground transport?

13. OSHA requires the employer to ascertain that the certification of the liftlocks are in accordance with ILO requirements, but does not require that the certification records be available for inspection. Historically, in parts 1917 and 1918, OSHA requires that the records produced by the employer be available for inspection at the request of representatives of the U.S. Department of Labor. However, with liftlocks, the records are not currently the responsibility of or in the possession of the employer, but of the vessel owner. Does OSHA need to require the employer to make certificates available for inspection?

14. OSHA is seeking comment on whether to require, when some containers on a vessel are handled as VTLs, that all the containers on the deck of the vessel be interconnected by liftlocks, regardless of whether they are lifted in VTLs or single-container lifts. The Agency is concerned that, if SATLs are used to interconnect containers to be lifted in single-container lifts and liftlocks are used on the same vessel to interconnect containers to be lifted in VTLs, SATLs may sometimes be used instead of liftlocks in VTLs. Requiring a vessel using VTLs to only employ liftlocks and not SATLs onboard would eliminate this safety hazard. OSHA is aware that container vessels use a different type of lock to secure the bottom container on the deck to the hatchcover. This lock is different from SATLs and liftlocks and cannot be used for lifting due to its design (it is flat on one end). The Agency intends that these flat-ended locks should continue to be used to secure bottom containers to the hatchcover.

IV. Preliminary Economic Analysis and Preliminary Regulatory Flexibility Analysis

The Agency is proposing to incorporate provisions in its Marine Terminal and Longshoring Standards that permit VTLs of two containers with

a total weight of 20 tons, and incorporate comprehensive VTL work practices that are similar to those developed by ICHCA. The changes that OSHA is proposing to make are expected to benefit the regulated community by increasing productivity for those who choose to make use of VTLs. In order to make use of VTLs, the affected employers will need to incur some additional costs. However, this action does not constitute a ''significant regulatory action'' for the purposes of Executive Order (EO) 12866. That is, this proposal does not impose costs or have benefits to the regulated community in excess of $100 million.

Only those employers who choose to use VTLs will incur costs and realize productivity gains. If employers decide that VTLs will be beneficial to their operations, then the costs imposed by the regulation result from the following activities: (1) Ensuring that the cranes used for VTLs have LIDs; (2) developing and implementing plans for handling and transporting VTLs in a terminal; (3) notifying the crane operator through a cargo plan of the location and characteristics of all VTL units being handled; (4) ensuring that damaged and defective liftlocks are separated from operating liftlocks; and (5) ensuring that all liftlocks used to make up a VTL at a terminal are the same certified liftlocks that are on the vessel onto which the VTLs will be loaded.

Industrial Profile

According to a Dun & Bradstreet's 2002 Report (D&B, 2002), the total number of establishments and employees potentially affected by the proposal are grouped in NAICS 488310 (Port & Harbor Operations), NAICS 483111 (Deep Sea Freight Transportation), and NAICS 483113 (Coastal & Great Lakes Freight Transportation). The last two are the NAICS codes governing shippers of goods by water, and the first is the NAICS code (OMB, 1997) for establishments engaged in loading and unloading ships (see Table 1).

The Agency estimates that only a portion of the establishments in the affected industries will be able to or choose to adopt the option this proposal makes available (see Table 2). OSHA estimates that the affected establishments will be the larger employers that will choose to incur the costs associated with performing VTLs (certifying liftlocks (for ship owners only), ensuring that cranes have load indicating devices, ensuring damaged liftlocks do not get mixed with operating liftlocks, ensuring that the crane operator is aware of the VTL locations and characteristics, and developing a plan for transporting VTLs in the terminal). Stevedoring establishments (in NAICS 488310) with more than 100 employees are most likely to encounter situations where they could usefully perform VTLs.

TABLE 1.—INDUSTRIAL PROFILE FOR THE PROPOSED STANDARD

	NAICS 488310 Port & Harbor Operations	NAICS 483111 Deep Sea Freight Transportation	NAICS 483113 Coastal & Great Lakes Freight Transportation	Total all affected sectors
Establishments	212	507	301	1,020
Employees	6,037	15,663	8,393	30,093
Revenues	$643,203,331	$15,455,878,053	$4,270,754,490	$20,369,835,874
Profits (7%)	$45,024,233	$1,081,911,464	$298,952,814	$1,425,888,511
Establishments w/<20 Employees	179	379	223	781
Employees in Establishments with <20 Employees	850	2,152	223	3,225
Revenues Per Establishment	$571,677	$3,802,768	$3,023,502	.....
Profits Per Establishment	$40,017	$266,194	$211,645	.....
Establishments w/100 to 499 Employees	5	36	15	56
Employees in Establishments with 100 to 499 Employees	1,052	6,575	3,293	10,920
Revenues Per Establishment	$77,808,832	$155,591,006	$39,740,515	.....
Profits Per Establishment	$5,446,618	$10,891,370	$2,781,836	.....
Establishments w/>500 Employees	3	5	2	10
Employees in Establishments with >500 Employees	3,231	3,388	1,400	8,019
Revenues Per Establishment	$33,305,333	$301,600,000	$357,800,000	.....
Profits Per Establishment	$2,331,373	$21,112,000	$25,046,000	.....

Source: Office of Regulatory Analysis.
Profit rates taken from *Robert Morris Associates*, 1998–1999 (RMA, 1998).
Employees, establishments, and revenues taken from Dunn & Bradstreet, 2002.

Owners of the ships that transport containers (in NAICS 483111 and 483113), and have more than 100 employees, may ship containers organized for VTLs. OSHA assumes that smaller shipping lines will not choose to incur the expense of loading or unloading containers via VTLs which includes the costs of certifying liftlocks.

Only those companies operating in major ports will engage in transporting containers using VTLs. Thus, the Agency assumes, for the purposes of this preliminary estimate, that all of the establishments in NAICS 488310, 483111, and 483113 with greater than 100 employees will choose to incorporate VTLs into their workplaces. The resulting number and characteristics of establishments likely to adopt VTLs are shown in Table 2. However, nothing prevents others from using VTLs. The Agency seeks comment on these estimates concerning the number and kinds of establishment likely to adopt VTLs.

TABLE 2.—AFFECTED ESTABLISHMENTS AND EMPLOYEES

	NAICS 488310 Port & Harbor Operations	NAICS 483111 Deep Sea Freight Transportation	NAICS 483113 Coastal & Great Lakes Freight Transportation	Total all affected sectors
Total Affected Establishments	8	41	17	66
100 to 499 employees	5	36	15	56
Employees	1,052	6,575	3,293	10,920
Revenues Per Establishment	$77,808,832	$155,591,006	$39,740,515	
Profits Per Establishment	$5,446,618	$10,891,370	$2,781,836	
> 500 Employees	3	5	2	10
Employees	3,231	3,388	1,400	8,019
Revenues Per Establishment	$33,305,333	$301,600,000	$357,800,000	
Profits Per Establishment	$2,331,373	$21,112,000	$25,046,000	

Source: Office of Regulatory Analysis.
Profit rates taken from *Robert Morris Associates*, 1998–1999 (RMA, 1998).
Employees, establishments, and revenues taken from Dunn & Bradstreet, 2002.

Technological Feasibility

The Occupational Safety and Health Act (OSH Act) mandates that OSHA, when promulgating standards for protecting workers, consider the feasibility of the new workplace rules. Court decisions have subsequently clarified ''feasibility'' in economic and technological terms.

Consistent with the legal framework established by the OSH Act, Executive Order 12866, and Court decisions, OSHA has assessed the technological feasibility of the proposed standard on vertical tandem lifting of containers. The proposed provisions are consistent with current industry practice and have been developed based on industry recommendations and international standards. Therefore, OSHA has preliminarily determined that the proposal is technologically feasible.

On ships, the process of lifting two secured containers that are coupled together vertically (a VTL) can only be done with containers on the deck level of the ship. For containers stored below deck, SATLs cannot be used to connect the containers. Ships use cell guides below deck instead of SATLs. On average, about one-third of the containers are stored above deck and the other two-thirds below deck. Only a few establishments now use VTLs to move containers. Most establishments do not use VTLs at all, and many probably will continue not to use them even after the final standard is promulgated. However, VTLs will allow some companies to realize substantial cost savings.

Model Container Ship Profile

In order to model cost savings and costs for the VTL rule, OSHA developed a model for an average container ship loading or unloading operation with VTLs.

According to 1992 data (Longshoring & Marine Terminals FEA, 1997), vessels carrying containers docked 1,564 times at U.S. ports, with a combined total carrying capacity of 1.76 million Twenty-foot Equivalent Units (TEUs) at U.S. ports. One TEU is equivalent to a 20-foot container. This estimate of vessels includes all classes of vessels that carry containers either in liner service or in non-liner service. Vessels in liner service operate on fixed routes to advertised ports on published schedules (OSHA, 1997). The Agency estimates that only 10 percent of the 1,564 dockings of vessels at U.S. ports would use VTLs in the loading or unloading operations, or 156 jobs. This estimate of 156 VTL jobs was used in estimating the industry costs for this analysis. The Agency seeks comment on this assumption.

To develop parameters for the model container ship, the Agency divided the total carrying capacity of all vessels (1.76 million TEUs) by the total number of dockings of vessels carrying containers at U.S. ports (1,564) in 1992, results in 1,125 TEUs per vessel. This estimate is based on the 1992 data. Today, however, container ships are being built with carrying capacities of five to six thousand TEUs. Therefore, the Agency feels that it is more realistic to increase the model ship's carrying capacity to 3,000 40-foot containers for estimating costs. The model is described further in the following sections.

OSHA thus estimated that the typical ship to use as a model for analytic purposes is a ship carrying 3,000 40-foot containers. A ship of this size would have about 2,000 containers below deck that are not able to be moved as VTLs. The remaining 1,000 containers would be stored above deck. Of these, roughly one-third are estimated to be moved via VTLs (333). The Agency assumes that the cycle time for a crane to lift a container from the dock, load it on the ship, and return to the dock to pick up another container is about 2 minutes for moving one container at a time. This includes time needed for the dockside longshoremen to apply or remove liftlocks to the bottom corner castings. For the unloading or loading of 333 containers stowed above deck via VTLs, the productivity gains are estimated by taking the estimated time that it would take moving the containers one at a time and subtracting the time it would take using VTLs. Table 3 presents the model container ship used in OSHA's analysis.

TABLE 3.—MODEL CONTAINER SHIP

	Above deck	Below deck
Total Storage [1]	1000	2000.
Storage Using VTLs	333	0.
Total Liftlocks [2]	4000	0.

TABLE 3.—MODEL CONTAINER SHIP—Continued

	Above deck	Below deck
Loading/Unloading VTL Profile [3]	333 (2 at a time) 637 (1 at a time)	2000 (1 at a time).

Source: Office of Regulatory Analysis.
[1] VTLs can only be used above deck.
[2] Since liftlocks can only be used for VTLs, the Agency assumes that all locks used to store containers will be certified liftlocks.
[3] The costing will be based on a full unloading of the ship.

Benefits

This section reviews the populations at risk of occupational injury or death during the vertical tandem lifting of containers. OSHA anticipates that the proposed standard will decrease the time associated with moving containers from vessel to dock and vice versa and may decrease risk by reducing the total number of lifts per job. To assess the benefits of the proposed standard, OSHA has conducted an historical analysis of the frequency of VTLs and the time associated with such lifts, using a model container ship. These data were used to calculate the reduced time needed to complete a job using VTLs as opposed to lifting one container at a time. The following section estimates the increase in productivity OSHA expects affected employers to realize and describes the methodology used to develop these estimates.

Cost Savings Due to Productivity Gains

This analysis begins with the model container ship, as described above in Table 3. The cycle time estimates used to calculate cost savings are two minutes per container for single lifts (30 containers per hour) and 2.6 minutes for two containers (a total of 45 containers per hour) using VTLs. The actual amounts of time could vary considerably from port to port and across crane operators. These productivity gains are based on moving only two containers in a VTL. The Agency is assuming that the cycle time for loading or unloading a ship with containers is approximately the same. For the loading of the ship, the cycle time includes applying liftlocks to the bottom corner castings so that when they are put on the ship, they automatically lock into place. For the unloading of the ship, this time includes removing the liftlock from the containers. The actual time is dependent on the skill of the crane operator and the cargo plan. An experienced crane operator can move about 30 forty-foot containers per hour, one at a time, depending on the crane, characteristics of the ship, terminal, wind, *etc.* The Agency is assuming that by using a VTL, the same experienced crane operator can move about 45 forty-foot containers per hour. Using the model container ship, there are about 333 containers stored above deck that could be moved using a VTL. The productivity gains are represented by the difference between moving the containers one at a time and two at a time.

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Table 4

VTLs Benefits Assessment For the Model Container Ship

Assumptions and Parameters

Containers potentially moved as VTLs - 333

Rate of Movement without VTLs=30 containers per hour

Rate of Movement with VTLs=45 containers per hour

Total Hours Needed to Move Containers that can potentially be moved by VTLs:

1 at a time	333 (total containers) ÷ 30 (estimated containers per hour) = 11.1 hours per job
2 at a time (VTLs)	333 (total containers) ÷ 45 (estimated containers per hour) = 7.4 hours per job

Crane Hourly Rental Cost = $500

Total Rental Cost of Crane not Using VTLs =11.1 hours times $500 per hour =$5,550

Total Rental Cost of Crane when Using VTLs =7.4 hours times $500 per hour=$3,700

Total Savings on Crane Rental from Using VTLs =$1,850 ($5,550 without VTLs minus $3,700 with VTLs)

Average Gang Size without Using VTLs = 15 employees

Average Gang Size Using VTLs = 18 employees

Average Employee Hourly Wage Rate = $47.30

Total Labor Cost without Using VTLs =11.1 Hours times 15 employees times $47.30 per hour =$7,875

Total Labor Cost Using VTLs =7.4 Hours times 18 employees times $47.30 per hour=$6,300

Total Savings on Labor Costs from Using VTLs =$1,575 ($7,875 without using VTLs minus $6,300 using VTLs)

Total Saving in Longshoring Cost from Using VTLs =$3,425 ($1,850 in crane rental savings plus $1,575 in labor savings)

Other Savings: 3.7 hours in shipping time, 3.7 hours worth of port rental charges

Source: Office of Regulatory Analysis

There are several factors that will influence the cost estimate of moving containers one at a time versus using VTLs. Based on the model container ship, there are 333 containers stored above deck that can be moved via VTLs. Therefore, dividing the 333 containers by the total number of containers that the crane operator can move in an hour (30), it will take the crane operator about 11.1 hours for these containers. On the other hand, if the crane operator were moving the containers by VTLs, it would take about 7.4 hours, a 3.7 hour difference. This is the decrease in labor time needed for the unloading by VTLs instead of one at a time.

Other gains in productivity will be the decreased land and crane rental time needed by the stevedoring companies, which is a direct result of the 3.7 hour

decrease in time using VTLs. There may also be a cost saving from shorter dock or pier rental time for the ship.

As mentioned earlier, stevedoring companies rent the land and the cranes from the port authorities to load and unload ships. OSHA assumes that the crane costs $500 per hour with a 4-hour minimum rental. In this case, as shown in Table 4, 3.7 hours less of crane rental results in cost savings of $1,850 per ship unloaded using VTLs.

In addition to the crane rental savings, changes in labor costs must also be considered. Without using VTLs, the container handling involves a labor cost of $7,875 (15 persons times 11.1 hours times the wage rate of $47.30). VTL unloading requires an estimated three additional crew members beyond that required for normal unloading, but for a shorter period of time. Since performing the VTL unloading will take 7.4 hours (based on the container ship model), the cost of unloading using VTLs will be $6,300 (the cost of 18 employees times $47.30 per hour times 7.4 hours). Comparing the two, the savings in labor costs is $1,575 per ship unloaded using VTLs ($7,875 minus $6,300).

There may be substantial productivity gains to be realized by other parties. The shipping line gains a 3.7 hour reduction in time to deliver cargo, which translates to a higher return to capital for the ship owners. In addition, the shipper receives the goods 3.7 hours sooner, which could reduce inventory and other costs. The Agency did not estimate savings in port charges paid to unload the ship or in inventory costs to shippers. However, the Agency believes these efficiency cost savings may be significant and seeks comment.

The table below on productivity gains assumes that the containers are pre-stacked VTLs prior to the ships docking to ensure that the productivity gain stems solely from the act of moving the containers and not from any other source. Based on the table of productivity gains, moving two containers at one time would yield the highest marginal productivity gain. Based on the model and assumptions of cycle times, higher total productivity gains may be possible with VTLs of more than two containers. When moving more than two containers simultaneously, the gain diminishes for each added container. This diminishing gain stems solely from the assumptions in the model of the number of containers per hour and the minutes per lift variables. This analysis is dependent on the estimate of the number of containers per hour that can be moved. The ''decreased lifts per hour'' column captures a possible measure of where some effect on risk may occur. Fewer lifts may result in less risk. The Agency has preliminarily concluded that, when the proper work practice precautions as specified in the proposed standard are followed, the relative safety risk of two-container VTLs and single lifts are approximately the same. The Agency does not have any data to quantify this portion of risk. The Agency seeks comment on this approach.

TABLE 4b.—PRODUCTIVITY GAINS

Number of containers per lift	Containers per hour	Lifts per hour	Minutes per lift	Decreased lifts per hour	Marginal gain from lifts (minutes)
1	30	30	2	.....	.....
2	45	22.5	2.7	7.5	0.7
3	55	18.3	3.3	4.2	0.6
4	65	16.25	3.7	2.1	0.4
5	75	15	4.0	1.3	0.3

Source: Office of Regulatory Analysis.

Based on the model container ship profile, the Agency preliminarily estimates the benefits of using VTLs are $3,425 in direct cost savings for stevedoring costs for each VTL related operation. If, as estimated in the next section, VTLs are used for 156 jobs per year, then the total annual cost savings in stevedoring costs would be $534,300 per year. In addition, the shipper receives the cost saving associated with 3.7 hours less time needed to load or unload containers. This 3.7 hours translates into faster shipping service to shipper and improved productivity for shipping capital. The benefits also include decreased dock, or marine terminal, rental time and port fees associated with loading or unloading the ship. Due to the lack of data, the Agency has not quantified these benefits. The estimates are based on a ''per job'' basis; that is for a single loading or unloading operation of a container ship.

Costs of Compliance

This section presents OSHA's analysis of the estimated costs of compliance to be incurred by affected employers. This cost analysis is primarily based on the profile of affected workers and industries presented in the Industrial Profile section of this Preliminary Economic Analysis. The first section outlines the provisions of the proposed standard that are expected to impose costs on employers and describes the nature of those costs. The next part presents OSHA's assumptions and preliminary assessments with regard to current compliance, unit costs, life of equipment and programs, baseline data, and other data required to make compliance cost estimates. This section also describes OSHA's model container ship profile. Following the discussion of analytical assumptions and baseline data, this section examines, requirement by requirement, the expected costs of compliance by the model container ship and for the Marine Cargo Handling and Longshoring industries.

Performing VTLs is not mandatory. Employers could avoid using VTLs altogether by simply continuing to lift containers one at a time. Thus, a case can be made that this is a no cost rule with only net productivity gains. The proposal requires liftlocks to be inspected before using them for lifting and annual examinations thereafter. These requirements reflect ILO's loose gear requirements. Many of these costs of the proposal's initial inspection and annual examinations of liftlocks would be absorbed by vessel owners rather than the stevedores (who are the employers of longshoremen).

Provisions in the Proposal With Major Cost Impacts

The most important provisions of the proposal are reviewed in the following paragraphs. Although many new provisions are being proposed, only five may create costs on the regulated community. A proposed provision in § 1917.46(a)(1)(viii)(A) requires container gantry cranes that handle VTLs to be fitted with a LID. This would

allow the crane operator to know precisely the weight of the load.

Proposed § 1917.71(b)(9) requires the employer to notify the crane operator through a cargo stowage plan of the location and characteristics of all VTL units being handled. This is important so that the crane operator is aware of what he/she will be lifting and when.

Proposed § 1917.71(j) requires employers to develop and implement a plan for transporting VTLs in a terminal. This plan must include safe operating speeds; safe turning speeds; and any conditions unique to the terminal that could affect VTL operations.

Proposed § 1917.71(k) requires that the employer have a means of keeping damaged or defective liftlocks separate from operating liftlocks. This is currently being done for SATLs for lifts of single containers. Therefore, the Agency did not estimate additional compliance costs for this requirement.

The proposed § 1917.71(l) requires employers to ensure that liftlocks used to make up VTLs at a terminal are the same type of certified liftlocks that are on the vessel onto which VTLs will be loaded. This requirement will impose compliance costs not on the stevedore but on the ship owner. This cost is attributed to proposed § 1918.85(f)(3)(i) & (ii), which requires the ship owner to get the SATLs inspected prior to initial use as a liftlock for VTLs, and annually examined thereafter, based on ILO 152 convention requirements for loose gear. The requirements of initial testing, marking, and numbering the liftlocks with the safe working load (SWL) are tasks that will usually be done by the manufacturer, but for existing SATLs may be done by another company or the vessel owner. The logistics of testing, inspecting, and certifying liftlocks is difficult (for the employer/stevedore) since the ship owner has control of the locks and most of the locks are in nearly continuous use. The Agency seeks comment on this issue. The overall breakdown of costs by sector are as follows:

TABLE 4c.—PROVISIONS WITH POTENTIAL COST IMPLICATIONS BY SECTOR

1917 Marine terminals	1918 Longshoring
§ 1917.46(a)(1)(viii)(A)—Load Indicating Devices § 1917.71(b)(9)—Notify crane operator of cargo plan for VTLs § 1917.71(j)—Plan for transporting VTLs in the terminal. § 1917.71(k)—Means for keeping damaged or defective liftlocks from operating liftlocks. § 1917.71(l)(a)(vii) and (viii)—Liftlocks must be identical.	§ 1918.85(f)(3)(i)—Initial Testing of SATLs. § 1918.85(f)(3)(ii)—Annual inspection of liftlocks by a competent person.

Source: Office of Regulatory Analysis.

Not all of the requirements in Table 4c will incur compliance costs on employers. Specifically, the requirement for keeping damaged liftlocks separated from operating liftlocks is currently being done for all single lifts, thus no compliance costs are being estimated. The employer (shipper) could either replace his/her existing locks with new already certified liftlocks or have existing SATLs certified to be liftlocks. If the employer chooses to have existing SATLs certified, the Agency estimated that this activity will cost the employer $1 per lock to perform the initial testing of the lock. The SATLs would be sent to an independent testing company for these tests to be done. The testing company would also develop the certification record for the employer. The annual inspection of the liftlocks would also be done by an independent testing company at the same rate of $1 per lock.

A higher cost alternative is that the owner of the ship would simply buy new liftlocks. This would impose an enormous initial cost burden on the ship owner. Since these locks will come directly from the manufacturer, already tested, marked, inspected, and certified for lifting, the unit cost is $30 per lock. Thus, in considering the model container ship that is using 4,000 SATLs, the cost per ship would be $120,000. This cost would only be realized if the ship owner feels that it would be easier to purchase new liftlocks to enable the cargo handlers to comply with the proposal. Also, even with the model, if the ship owner is going to prepare containers for handling as VTLs, all SATLs on board need to be certified liftlocks, and they must be of a uniform type throughout the ship. The Agency believes that this is already industry practice based on the Agency's knowledge of the industry and information in the public meetings on VTLs.

Estimated Cost Using the Model Container Ship

For simplicity, the Agency is assuming that two container gantry cranes will load the empty model container ship with all 3,000 40-foot containers (the ship's full carrying capacity). Based on the specifications in Table 1, the containers being loaded will be a mix of 20 and 40-foot containers. (For purposes of space on container ships, two 20-foot containers, can be stored in the space of one forty-foot container.) However, for the purposes of this analysis, only the 40-foot containers will be used in VTLs. Forty-foot containers are more common and the analysis would not be essentially different with twenty-foot containers. Of the 3,000 40-foot containers, only 333 containers will be lifted in a VTL.

Since about half of the overhead container gantry cranes currently in operation already have LIDS, there will be little difference in the average rental cost for stevedoring companies renting the cranes. The cost of retrofitting a crane with a LID is estimated to be $10,000. When this cost is discounted over 10 years at a 7 percent discount rate, the annualized cost of the LID is $1,424. In a worst-case scenario, this total annualized cost would be passed along in full to the stevedoring company whose longshoremen are performing the VTLs. So for the purposes of this analysis, the Agency is assuming that the cranes being used for VTLs already have a LID; thus, the Agency did not estimate any additional compliance costs for this requirement.

Also, the stevedoring supervisor must inform the crane operator of the vessel cargo stowage plan, which shows the location and characteristics of all VTL units to be handled (proposed in § 1917.71(b)(9)). The Agency estimates that it will take ten minutes (0.1667 hours) to perform this task. Thus, multiplying the hourly wage rate ($60.92) by this fraction of one hour, the cost is $10.

According to the proposed standard, employers are required to develop a plan for transporting vertically connected containers in a terminal (§ 1917.71(j)). The Agency assumes that this plan would be developed by the

stevedoring supervisor along with information from the port authority (the owner of the land) prior to the ship's arrival in port. OSHA estimates that it will take four hours of supervisory time to develop this plan. The cost of this task is estimated by multiplying the supervisor's average wage rate of $60.92 per hour (PMA, 2003) by the four hours to complete this task. This totals $244 per establishment. In addition to the time to develop the plan, the Agency estimates that it will take employers one hour each to maintain and update the plan as necessary. The second and recurring cost year for this requirement is $61 annually per plan.

The employer would also need to ensure that the liftlocks used to make up VTLs at a terminal are the same type of certified liftlocks that are on the vessel. The ship owner and stevedore must ensure that the liftlocks are certified. The ship owner owns the liftlocks. The Agency estimates that the 4,000 SATLs needing to be certified on the model container ship will cost about $1 per lock for testing, certification, and annual examination. Thus, the cost to comply with this requirement for the model container ship is $4,000. The Agency assumes that each affected shipper will have at least one ship that will do VTLs and need to have all of its SATLs certified. The Agency seeks comment on this assumption.

Table 5 presents the estimates for the total cost of performing VTLs using the model container ship operation. Performing VTLs actually results in a net cost saving; the savings are calculated in the Benefits section of this Preliminary Economic Analysis.

OSHA does not believe that the entire industry will use VTLs. At most ports, unions and stevedores must negotiate work practices, which may include the decision to perform VTLs. The potential for VTLs is also highly dependent on the pattern of trade in each port or the cargo of each ship. The majority of the costs would not be imposed directly on the stevedore (employer), because the ship owners would need to ensure that SATLs are certified before being used as liftlocks.

TABLE 5.—MODEL CONTAINER SHIP OPERATION COST AND TOTAL INDUSTRY COMPLIANCE COSTS

	Model container-ship operation cost	Estimate industry compliance cost [1]
§ 1917.46(a)(1)(viii)(A)—Load Indicating Devices	0	0
§ 1917.71(b)(9) Notifying the crane operator of the VTLs	10	1,584
§ 1917.71(j) Plan for transporting VTLs in the terminal	244	1,949
§ 1917.71(k) Means of Separating Damaged and Working Liftlocks [2]	0	0
§ 1918.85(f)(3)(i)&(ii) Testing and Examining Liftlocks	4,000	232,000
Total Costs	4,254	235,533

Source: Office of Regulatory Analysis.
[1] These estimates were calculated mostly by multiplying the model container ship operation cost by 156 (estimate of the number of VTL jobs).
[2] This practice is already being done whether VTLs are being done or not, as discussed in the text.

The costs of compliance in Table 6 illustrate total annualized compliance costs, estimated on a per establishment basis for each affected NAICS code. Table 6 assumes that each establishment would have at least one ship that would need to replace all of its SATLs to have them certified for the purposes of VTLs. OSHA recognizes that this assumption may overstate the costs. Based on this data and the discussion above in the Industry Profile section, the Agency is estimating that 58 vessels would have their ship's SATLs certified for VTLs.

TABLE 6.—ESTIMATED ANNUALIZED COMPLIANCE COST PER ESTABLISHMENT

	NAICS 488310 Port and harbor operations	NAICS 483111 Deep sea freight transportation	NAICS 483113 Coastal and Great Lakes freight transportation
Affected Establishments Engaging in VTLs	8	41	17
Load Indicating Devices	$0	$0	$0
Notifying the crane operator	$1,584	$0	$0
Plan for Transporting VTLs	$278 [1]	$0	$0
Means of Separating Damaged and Working Liftlocks	$0	$0	$0
Testing and Examining Liftlocks	$0	$164,000	$68,000
Total Annualized Compliance Cost	$1,862	$164,000	$68,000
Annual Compliance Cost Per Affected Establishment	$233	$4,000	$4,000

Source: Office of Regulatory Analysis.
[1] This total represents the cost for developing the plans for transporting VTLs in the marine terminal ($1,949) discounted by a 7 percent rate over 10 years, which totals $278.

OSHA estimates that for every dollar spent in NAICS 488310 to comply with the proposal, the employer would save approximately ten dollars by using VTLs. For the shippers, the cost invested in initially inspecting SATLs and annually examining liftlocks is estimated to reduce their shipping time by about 4 hours each for 156 cargoes in NAICS 483111 and NAICS 483113 (Table 6).

Economic Impact Analysis

This proposed rule presents no issues of economic infeasibility. The use of VTLs is an option available to the employers. Any employer that finds that using VTLs would result in an increase in its costs need not adopt this option, and thus need not incur any costs. OSHA has examined the economic impacts for those who incur the costs of using VTLs.

First, the Agency computed compliance costs on a per establishment basis, which required consideration of the number of potentially affected establishments. As indicated earlier in this analysis (see Table 6), approximately 66 establishments are potentially affected by this proposal. For the purpose of conducting the regulatory flexibility screening analysis, OSHA estimated that small firms will not bear the cost associated with performing VTLs. These costs may be incurred by the larger establishments in the industry, particularly the high volume ports.

TABLE 7.—ESTIMATED ECONOMIC IMPACTS FOR AFFECTED SECTORS

NAICS	Description	Compliance cost per establishment	Compliance cost as a percentage percentage of revenues	Compliance cost as a of pre-tax profits
488310	Port and Harbor Operations	$233	0.00	0.01
483111	Deep Sea Freight Transportation	4,000	0.00	0.04
483113	Coastal & Great Lakes Freight Transportation	4,000	0.01	0.14

Source: Office of Regulatory Analysis.

The economic impacts outlined in Table 7 of this analysis are based on using the lowest estimate of revenues and costs from either the 100 to 499 size class or the >500 size class (see Table 2). The costs of the proposal are extremely small, and the proposed standard is economically feasible.

Regulatory Flexibility Analysis

According to the Small Business Administration (SBA), a small business in NAICS 483111 or 483113 is any firm with less than 500 employees (see references below). However, for NAICS 488310, SBA defines a small business by total sales of less than $21.5 million. Using the average sales per establishment, OSHA found that the firms with less than 250 employees earned less than $21.5 million in sales annually, while establishments with more than 250 employees exceeded that sales figure. For reasons discussed in the Industry Profile, establishments with less than 20 employees are unlikely to perform VTLs because of the size and kind of ships they service. Table 8 shows even under a worst-case scenario, the proposed requirements would have minimal impacts on small firms. Accordingly, OSHA certifies that this standard will not have significant impact on a substantial number of small entities.

TABLE 8.—ESTIMATED SMALL FIRM IMPACTS

NAICS	Number of small firms potentially affected	Compliance cost per firm	Compliance cost as a percentage of revenues	Compliance cost as a percentage of profits
488310—Port & Harbor Operations	3	$233	0.01	0.18
483111—Deep Sea Freight Transportation	36	4,000	0.00	0.06
483113—Coastal & Great Lakes Freight Transportation	15	4,000	0.11	1.62

Source: Office of Regulatory Analysis.

References

Dunn & Bradstreet [D&B, 2002]. *Market Profile Database.* 2002

Office of Management and Budget [OMB, 1997]. *North American Industry Classification System Manual.* 1997

Occupational Safety and Health Administration [OSHA,1997]. *Final Economic Analysis for the Longshoring and Marine Terminals Standards.* 1997 (Ex. L–91)

Pacific Maritime Association [PMA, 2003]. *Report: Hours with Wages Paid to Registered Work Force.* 2003

Robert Morris Associates [RMA, 1998–1999]. *Annual Statement Studies.* 1998

Small Business Administration [SBA, 2002]. *Table of Size Standards Matched to North American Industry Classification System Codes.* 2002

V. Environmental Impact

Finding of No Significant Impact. OSHA has reviewed the proposed rule according to the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (40 CFR parts 1500 through 1517), and the Department of Labor's (DOL) NEPA Procedures (29 CFR part 11). Based on this review, the Assistant Secretary for OSHA finds that the proposed rule will have no significant environmental impact.

The revisions and additions to 29 CFR parts 1917 and 1918 focus on the reduction of employee death and injury. OSHA will achieve this reduction through the updating of its regulations for longshoring and marine terminal operations to provide safe practices for employers who choose to perform VTLs. The new language of these rules does not affect air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. Therefore, the new rules are categorized as ''excluded actions'' according to § 11.10(a)(1), of the DOL NEPA regulations.

VI. OMB Review Under the Paperwork Reduction Act of 1995

The proposed rule for VTLs for longshoring and marine terminals contains two new collections of information (paperwork) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95), 44 U.S.C. 3501 *et seq.*, and its regulation at 5 CFR part 1320. In addition, the proposal redesignates a currently approved collection of information, § 1917.71(f)(4) to § 1917.71(f)(5). The collection of information is approved under OMB control number 1218–0196. PRA 95 defines collection of information to mean, ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or

for an agency regardless of form or format'' (44 U.S.C. 3502(3)(A)).

The title, description of the need for and proposed use of the information, summary of the collections of information, description of respondents, and frequency of response of the information collection are described below with an estimate of the annual cost and reporting burden as required by § 1320.5(a) (1)(iv) and § 1320.8(d)(2). The reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OSHA invites comments on whether each proposed collection of information:

(1) Ensures that 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) Estimates the projected burden accurately, including the validity of the methodology and assumptions used;

(3) Enhances the quality, utility, and clarity of the information to be collected; and

(4) Minimizes 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 submissions of responses.

Title: Vertical Tandem Lifts, 29 CFR Parts 1917 and 1918.

Description: The proposed standard is based on three primary sources: results of OSHA-sponsored research and comments from public meetings; the International Standards Organization's revised ISO 3874, Freight Containers, which permits VTLs with a total weight of up to 20 tons (20,000 kgs); and the VTL guidelines developed by the International Cargo Handling and Coordination Association (ICHCA). The standard's information collection requirements are essential components that will help employers and employees verify that containers and their contents in a VTL weigh 20 tons or less and assure that the vertically connected containers are handled safely in the terminal.

Summary of the Collections of Information: The proposed rule contains two collections of information (paperwork) requirements. Proposed section 1917.71, paragraph (b)(9) would require that the crane operator receive a copy of the ship's cargo stowage plan. Paragraph (j) of this section would require employers to create a written terminal plan. The plan must include the following information for vehicles carrying vertically connected containers:

(1) safe operating speeds;

(2) safe turning speeds; and

(3) any conditions unique to the terminal that could affect the safety of VTL operations.

Respondents: Marine terminal and longshoring employers that perform VTLs.

Frequency of Response: The development of the written terminal plan is a first-year burden for those establishments that will use VTLs. The frequency of providing a copy of the ship's cargo stowage plan to the crane operator is determined by the number of ships using VTLs to unload cargo.

Average Time Per Response: OSHA estimates that establishments will spend 10 minutes to provide a copy of the cargo stowage plan to the crane operator, and 4 hours for establishments to develop, implement, and maintain the written terminal plan for transporting VTLs. OSHA estimates establishments will spend 1 hour to review and update the written plan for transporting VTLs in subsequent years.

Total Burden Hours:

Total Estimated Burden Hours in First Year: 59.

Total Estimated Cost in First Year: $3,594.

Total Estimated Burden Hours in Second and Subsequent Years: 39.

Total Estimated Costs in Second and Subsequent Years: $2,376.

The Agency has submitted a copy of the information collection request to OMB for its review and approval. Interested parties are requested to send comments regarding this information collection to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer, OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503.

Costs (purchase of capital/start up costs): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the final information collection request, and they will also become a matter of public record.

Copies of the referenced information collection request are available for inspection and copying in the OSHA Docket Office and will be provided to persons who request copies by telephoning Todd Owen at (202) 693–1941 or Theda Kenney at (202) 693–2444. For electronic copies of the Vertical Tandem Lifts in Longshoring and Marine Terminals information collection request, contact the OSHA Web page on the Internet at *http://www.osha.gov/.* Copies of the information collection request are also available at the OMB docket office.

VII. Public Participation

Interested persons are requested to submit written data, views, and arguments concerning this proposal. These comments must be received by December 15, 2003. Comments may be submitted in hard copy or electronically. For more information and requirements on how to submit comments, see the **DATES** and **ADDRESSES** sections at the beginning of this notice.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Additionally, under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. Objections and hearing requests must be submitted in triplicate to the Docket Office (see **ADDRESSES** section) and must comply with the following conditions:

1. The objection must include the name and address of the objector;

2. The objections must be received by December 15, 2003;

3. The objections must specify with particularity grounds upon which the objection is based;

4. Each objection must be separately numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make those objections and their recommendations in their written comments and OSHA will fully consider them. There is only a need to file formal ''objections'' separately if the interested person requests a public hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information that may be available, in order that the record of this rulemaking may present a complete picture of the public response on the issues involved.

VIII. State Plan Requirements

This **Federal Register** document issues a proposal for new and revised

rules addressing the handling of VTLs in marine cargo handling regulated in 29 CFR parts 1917 and 1918. The rules when final will be codified into the applicable section of the Code of Federal Regulations.

The 26 States or U.S. Territories with their own OSHA approved occupational safety and health plans must develop comparative standards applicable to both the private and public (State and local government employees) sectors within six months of the publication date of a permanent final Federal rule or show OSHA why there is no need for action, *e.g.*, because an existing state standard covering this area is already ''at least as effective as'' the new Federal standard. Three States and territories cover only the public sector (Connecticut, New York, and New Jersey).

Currently five States (California, Minnesota, Oregon, Vermont, and Washington) with their own State plans cover private sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States and in the following State Plan States: Alaska, Arizona, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey (plan covers only State and local government employees), New Mexico, New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States.

IX. Federalism

The standard has been reviewed in accordance with Executive Order 13132 (64 FR 43255; August 10, 1999) regarding federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federal standards on longshoring and marine terminals operations address hazards which are not unique to any one state or region of the country. Nonetheless, those States that have elected to participate under section 18 of the OSH Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

X. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

List of Subjects

29 CFR Part 1917

Freight, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements.

29 CFR Part 1918

Freight, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

XI. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary's Order 5–2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC, this 10th day of September, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

For the reasons stated in the preamble, the Agency proposes to amend 29 CFR parts 1917 and 1918 as follows:

PART 1917—MARINE TERMINALS

1. The authority citation for part 1917 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1917.28, also issued under 5 U.S.C. 553.

Section 1917.29, also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

2. In § 1917.2, add the definitions of *Liftlock* and *Vertical tandem lift* (VTL) in alphabetical order to read as follows:

§ 1917.2 Definitions.

* * * * *

Liftlock means a semi-automatic twistlock or other inter-box connector that is used to couple intermodal containers vertically together so that they may be handled as one unit.

* * * * *

Vertical tandem lift (VTL) means the operation of lifting two intermodal containers that are coupled together vertically (one on top of the other).

3. In § 1917.3, revise the first sentence of paragraph (a)(3) and the second sentence of paragraph (a)(4), and add new paragraph (c) to read as follows:

§ 1917.3 Incorporation by reference.

(a) * * *

(3) The materials listed in paragraphs (b) and (c) of this section are incorporated by reference in the corresponding sections noted as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**. * * *

(4) * * * The materials are available for purchase at the corresponding addresses of the private standards organizations noted in paragraphs (b) and (c) of this section. * * *

* * * * *

(c) The following material is available for purchase from the ISO Central Secretariat, International Organization for Standardization (ISO),1, rue de Varembéé, Case postale 56 CH–1211 Geneva 20, Switzerland:

(1) ISO 3874, Freight Containers, Amendment 2, Vertical tandem lifting (2002); IBR approved for § 1917.71(l)(1)(i).

(2) [Reserved]

4. In § 1917.46, add a sentence to the end of paragraph (a)(1)(viii)(A) to read as follows:

§ 1917.46 Load indicating devices.

(a) * * *

(1) * * *

(viii) * * *

(A) * * * *Exception:* When this type of crane performs a VTL, a load indicating device in proper working condition is required.

* * * * *

5. Section 1917.71 is amended by:

a. Adding new paragraphs (b)(9) and (b)(10);

b. Redesignating paragraphs (f)(3) through (5) as paragraphs (f)(4) through (6) respectively;

c. Adding a new paragraph (f)(3); and

d. Adding new paragraphs (i), (j), (k), (l), and (m).

The additions read as follows:

§ 1917.71 Terminals handling intermodal containers or roll-on roll-off operations.

* * * * *

(b) * * *

(b)(9) *Vertical tandem lifts.* If VTLs will be performed, the employer shall use the vessel's cargo stowage plan required in paragraphs (b)(1) and (b)(2)(ii) of this section to determine the location and characteristics of all VTL units being handled and shall provide a copy to the crane operator.

(10) The employer shall ensure that the crane operator conducts a pre-lift before hoisting a VTL. A pre-lift means that the crane operator pauses the lift when the initial strain has been taken and the lifting frame wires tensioned in order to assure that all liftlocks are properly engaged.

* * * * *

(f) * * *

(3) *Vertical tandem lifts.* The employer shall ensure that each VTL is conducted in accordance with the following criteria:

(i) A VTL shall consist of no more than two ISO approved series 1 containers, with a total weight of cargo and containers not to exceed 20 tons;

(ii) Only shore-based container gantry cranes are used;

(iii) Containers containing the following may not be lifted as a VTL:

(A) Liquid or solid bulk cargoes;

(B) Hazardous cargo; or

(C) A flexible tank inside that is fully or partially loaded with a fluid cargo;

(iv) No platform container with its end frames erect may be lifted as part of a VTL unit. Empty platform containers with their end frames folded may be lifted in a VTL unit in accordance with the applicable regulations of this part. If the interbox connectors are an integral part of the platform container and are designed to lift other empty platform containers, they may be interlocked and lifted in accordance with the manufacturer's recommendations;

(v) Containers below deck may not be handled as a VTL; and

(vi) VTLs may not be conducted when wind speeds exceed 34 mph (55 kph) (30 knots).

* * * * *

(i) The employer shall not use flat bed trucks, chassis, bomb carts, or similar type equipment to transport containers that are vertically connected, unless such equipment is specifically designed to safely transport vertically connected containers or has been evaluated by a qualified person and determined to be a safe mode of operation. For the purposes of this paragraph, a qualified person means one with a recognized degree or professional certificate and extensive knowledge and experience in the transportation of vertically connected containers who is capable of design, analysis, evaluation and specifications in that subject.

(j) The employer shall develop and implement a written plan for transporting vertically connected containers in a terminal. The written plan shall establish safe operating speeds; safe turning speeds; and address any conditions unique to the terminal that could affect the safety of VTL-related operations. The employer shall review and update the plan as necessary.

(k) Damaged or defective liftlocks shall be removed from service and not used for lifting. A means of keeping damaged or defective liftlocks separate from operating liftlocks shall be established.

(l)(1) The employer shall ensure that each liftlock used in a marine terminal to connect VTLs:

(i) Is in compliance with the applicable standards of ISO 3874;

(ii) Is inspected by a competent person, certificated, and individually tested in accordance with requirements for loose gear in ILO Convention 152 before being used for the first time and after any substantial alteration or repair (''certificated'' means that the liftlock is accompanied by a certificate, issued by a recognized body that is approved by the competent authority, to conduct appropriate testing and thorough examination of liftlocks);

(iii) Is subjected to a thorough examination by a competent person at least once in every 12 months. A thorough examination shall include: a visual exam for obvious structural defects; physical operation to determine that the lock is fully functional with adequate spring tension on each head or latch; a check for excessive corrosion and deterioration; and immediate removal from service when found to be defective or damaged;

(iv) Is regularly examined, including visual inspection, before each use;

(v) Is certificated with a Safe Working Load (SWL) for lifting of at least 10,000 kg;

(vi) Is clearly and durably marked with its SWL for lifting and an identifying number or mark that will enable it to be associated with its test certificate;

(vii) Locks and releases in an identical direction and manner as all other liftlocks on the vessel onto which the VTLs will be loaded. They shall have a ''telltale'' incorporated in the design that indicates whether the liftlock is locked or unlocked in the corner fittings. This ''telltale'' shall be visible from deck level; and

(viii) Is the same type as the other liftlocks that are on the vessel onto which the connected containers will be loaded.

(2) For the purpose of this paragraph (l), a competent person means a person familiar with the proper maintenance and use of liftlocks by training or experience. Such a person will be able to detect defects or weaknesses and be able to assess their importance in relation to the safe and continued use of the liftlocks.

(m) Manual twistlocks or latchlocks shall not be used as liftlocks.

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

1. The authority citation for part 1918 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Sec. 41, Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; Secretary of Labor's Order No. 6–96 (62 FR 111) or 5–2002 (67 FR 65008), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

2. In § 1918.2, add the definitions for *Competent authority, Liftlock,* and *Vertical tandem lift* (VTL), in alphabetical order, to read as follows:

1918.2 Definitions

* * * * *

Competent authority, for the purpose of VTLs, means the appropriate government agency having jurisdiction over VTL operations in each port of call where such operations are proposed.

* * * * *

Liftlock means a semi-automatic twistlock or other inter-box connector that is used to couple intermodal containers vertically together so that they may be handled as one unit.

* * * * *

Vertical tandem lift (VTL) means the operation of lifting two intermodal containers that are coupled together vertically (one on top of the other).

* * * * *

3. In § 1918.3, revise the first sentence of paragraph (a)(3), revise the second sentence of paragraph (a)(4), and add new paragraph (c) to read as follows:

§ 1918.3 Incorporation by reference.

(a) * * *

(3) The materials listed in paragraphs (b) and (c) of this section are incorporated by reference in the corresponding sections noted as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**. * * *

(4) * * * The materials are available for purchase at the corresponding addresses of the private standards organizations noted in paragraphs (b) and (c) of this section. * * *

* * * * *

(c) The following material is available for purchase from the ISO Central Secretariat, International Organization for Standardization (ISO),1, rue de Varembéé, Case postale 56 CH–1211 Geneva 20, Switzerland:

(1) ISO 3874, Freight Containers, Amendment 2, Vertical tandem lifting (2002); IBR approved for § 1918.85(f)(3)(i).

(2) [Reserved]

4. In § 1918.85, add paragraphs (f)(3), (f)(4), and (f)(5) to read as follows:

§ 1918.85 Containerized cargo operations.

* * * * *

(f) * * *

(3) *Vertical tandem lifting.* Prior to a vertical tandem lift, the employer shall assure, using the vessel's liftlock certificate(s), that the liftlocks used in a VTL:

(i) Are in compliance with the applicable standards of ISO 3874;

(ii) Have been inspected by a competent person, certificated, and individually tested in accordance with requirements for loose gear in ILO Convention 152 before being used for the first time and after any substantial alteration or repair (''certificated'' means that the liftlock is accompanied by a certificate, issued by a recognized body that is approved by the competent authority, to conduct appropriate testing and thorough examination of liftlocks);

(iii) Have been subjected to a thorough examination by a competent person at least once in every 12 months. A thorough examination shall include: a visual exam for obvious structural defects; physical operation to determine that the lock is fully functional with adequate spring tension on each head or latch; a check for excessive corrosion and deterioration; and immediate removal from service when found to be defective or damaged;

(iv) Are regularly examined, including visual inspection, before each use;

(v) Have been certificated with a Safe Working Load (SWL) for lifting of at least 10,000 kg;

(vi) Have been clearly and durably marked with its SWL for lifting and an identifying number or mark that will enable it to be associated with its test certificate; and

(vii) Locks and releases in an identical direction and manner as all other liftlocks on the vessel. They shall have a ''telltale'' incorporated in the design that indicates whether the liftlock is locked or unlocked in the corner fittings. This ''telltale'' shall be visible from deck level.

(4) For the purpose of paragraph (f)(3) of this section, a competent person means a person familiar with the proper maintenance and use of liftlocks by training or experience. Such a person will be able to detect defects or weaknesses and be able to assess their importance in relation to the safe and continued use of the liftlocks.

(5) Manual twistlocks or latchlocks shall not be used as liftlocks.

* * * * *

[FR Doc. 03–23533 Filed 9–15–03; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Tuesday,
September 16, 2003

Part VI

The President

Proclamation 7703—National Historically Black Colleges and Universities Week, 2003

Proclamation 7704—Small Business Week, 2003

Presidential Determination No. 2003–36 of September 12, 2003—Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 68, No. 179
Tuesday, September 16, 2003

Presidential Documents

Title 3—

The President

Proclamation 7703 of September 12, 2003

National Historically Black Colleges and Universities Week, 2003

By the President of the United States of America

A Proclamation

Historically Black Colleges and Universities have a distinguished past and an important future in providing higher education for Americans throughout our country. As we celebrate National Historically Black Colleges and Universities Week, we recognize these institutions for their dedication to academic excellence. And we reaffirm our Nation's commitment to equal educational opportunities for all Americans.

Since the mid 1800s, Historically Black Colleges and Universities have provided superb education and training to many Americans. And these schools opened the door to African Americans when other doors were shamefully barred. Since their inception, these schools have furthered the development of young people who went on to become leaders in government, business, education, science, the military, law, and many other fields. Graduates of Historically Black Colleges and Universities have made great contributions to America, and continue to serve as role models for all Americans.

The struggles and many successes of America's Historically Black Colleges and Universities are the struggles and successes of our Nation. Today, our Nation's 105 Historically Black Colleges and Universities are building on their commitment to excellence and their integral position within our higher education system. Our Nation must continue to support these schools for the sake of our students and our future.

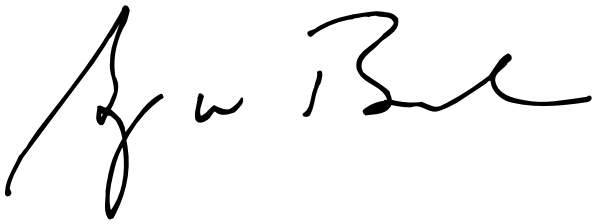
In 2002, I signed an Executive Order supporting the White House Initiative on Historically Black Colleges and Universities to help find new ways to strengthen these schools. My Administration also has sought to increase fiscal year 2004 funding for Historically Black Colleges and Universities by 5 percent, requesting more than $224 million. In addition, the President's Board of Advisors on Historically Black Colleges and Universities is helping these colleges and universities benefit from Federal programs, obtain private-sector support for their endowments, and build private-sector partnerships to strengthen faculty development and cooperative research.

America's Historically Black Colleges and Universities have a proud and storied tradition. America recognizes and salutes their history and achievements and will work for their continued success.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 14 through September 20, 2003, as National Historically Black Colleges and Universities Week. I call upon public officials, educators, librarians, and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs as we demonstrate our appreciation for these important institutions and their many successful graduates.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of September, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–23867
Filed 9–15–03; 1:44 pm]
Billing code 3195–01–P

Presidential Documents

Title 3—

The President

Proclamation 7704 of September 12, 2003

Small Business Week, 2003

By the President of the United States of America

A Proclamation

The success of small businesses in America reflects the innovation, determination, and hard work of the American people. During Small Business Week, we celebrate the entrepreneurs and business people who create goods, services, and jobs, and bring opportunity and economic prosperity to communities throughout our country. We also reaffirm our commitment to helping more small business owners and their employees realize the American Dream.

Small businesses create the majority of new jobs in our Nation and account for more than half of the output of our economy. They lead the way in generating new ideas and creating new technologies, goods, and services for our country and for the world.

Small businesses also reflect the diversity of America. Nearly 40 percent of small companies in the United States are owned by women. There are also more than 3 million minority-owned small businesses across the country.

Because small businesses are vital to our Nation's prosperity and reflect the hard work of the American people, my Administration has taken important steps to assist small businesses and the people they employ. We have reduced taxes, encouraged investment, and removed obstacles to growth. The Jobs and Growth Tax Relief Reconciliation Act of 2003 I signed into law will provide 23 million small business owners with tax cuts averaging more than $2,200 each. The Act also quadrupled the amount that small businesses can expense for new capital investments, encouraging new investment in technology, machinery, and other equipment. This new technology and equipment will increase productivity and create new jobs, thereby contributing to the overall strength of our economy.

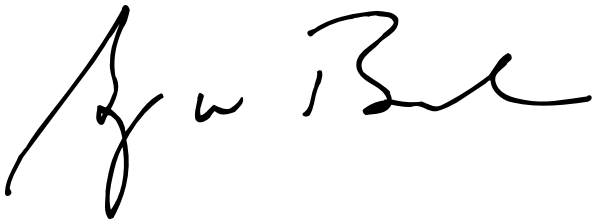
We are also seeking to permanently eliminate the death tax. With the repeal of this tax, small business men and women will be able to pass their life's work to the next generation without having to pay a punitive tax that in many cases forces the sale of the business or many of its assets. And I support legislation that would make it easier for small businesses to offer health coverage options to their employees. Through Association Health Plans, small businesses could pool together to offer group plans to all of their employees, like those available to large businesses. In addition, we are working to streamline small business regulations and paperwork. To this end, I issued an Executive Order that requires all Federal regulatory agencies to minimize these burdens on our Nation's small businesses.

The Small Business Administration (SBA), which helps American innovators and risk-takers launch and build their businesses, celebrates its 50th anniversary this year. By helping small businesses succeed, the SBA continues to strengthen America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 14 through September 20, 2003, as Small Business Week. I call upon all the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business

owners and their employees and encourage and foster the development of new small businesses.

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



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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–36 of September 12, 2003

Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

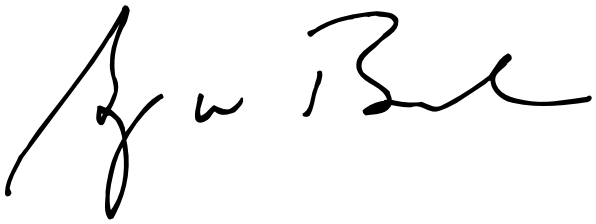
Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination on September 13, 2002 (67 Fed. Reg. 58681), the exercise of certain authorities under the Trading with the Enemy Act is scheduled to terminate on September 14, 2003.

I hereby determine that the continuation for 1 year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2004, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 C.F.R. part 500;
(2) the Transaction Control Regulations, 31 C.F.R. part 505; and
(3) the Cuban Assets Control Regulations, 31 C.F.R. part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the **Federal Register**.



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Assumption of partner liabilities; cross-reference; comments due by 9-22-03; published 6-24-03 [FR 03-15282]

Correction; comments due by 9-22-03; published 9-15-03 [FR C3-15282]

Loss corporations; interests distributions; cross reference; comments due by 9-25-03; published 6-27-03 [FR 03-16230]

LIST OF PUBLIC LAWS

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H.R. 2738/P.L. 108–77

United States-Chile Free Trade Agreement Implementation Act (Sept. 3, 2003; 117 Stat. 909)

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Prison Rape Elimination Act of 2003 (Sept. 4, 2003; 117 Stat. 972)

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